

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 December 2024

DOCKET NUMBER: AR20240003525

APPLICANT REQUESTS: upgrade of his characterization of service from General, Under Honorable Conditions to Honorable.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Rating Decision
- Resume
- Character reference letter

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he desires an upgrade of his characterization of service from under honorable conditions (general) to honorable.
3. The applicant enlisted in the Regular Army on 18 July 1997 for a period of 3 years. Upon completion of initial entry training, he was assigned to a unit at Fort Campbell, KY.
4. On 2 August 1999, the applicant reenlisted for a period of 4 years.
5. His Enlisted Record Brief shows he was promoted to the rank/grade of specialist (SPC)/E-4 on 18 September 1999, the highest rank he held.
6. The applicant was reassigned to a unit in Italy on 20 March 2000.
7. On 9 July 2000, the applicant was counseled for failing to return to his unit at the end of his approved leave and becoming absent without leave (AWOL). He was advised that he would be recommended for punishment for his poor decision.

8. On 27 July 2000, company grade nonjudicial punishment (NJP) was imposed upon the applicant under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for on or about 30 June 2000, without authority, absenting himself from his unit and remaining so absent until on or about 8 July 2000. His punishment consisted of reduction from SPC/E-4 to private first class (PFC)/E-3, suspended to be automatically remitted if not vacated before 23 January 2001; extra duty for 14 days; and restriction for an unspecified duration.

9. The applicant's duty status was changed from Present for Duty (PDY) to AWOL effective 28 February 2001 and from AWOL to PDY effective 13 March 2001.

10. The applicant was counseled on 4 April 2001 for going AWOL from 28 February 2001 until 13 March 2001; missing movement on 5 March 2001; and failing to obey an order or regulation on 28 February 2001. He was advised that continued misconduct of any nature would not be tolerated and could result in punishment under the UCMJ and/or action being taken to administratively separate him from the Army.

11. On 17 May 2001, field grade NJP was imposed upon the applicant under the provisions of Article 15, UCMJ for on or about 28 February 2001, without authority, and with intent to avoid field exercises, absenting himself from his unit and remaining so absent until on or about 13 March 2001; and for on or about 5 March 2001, through design missing movement of his unit, with which he was required in the course of duty to move. The applicant's proposed punishment is not shown on the DA Form 2627 (Record of Proceedings Under Article 15, UCMJ). He appealed the punishment on 18 May 2001. After consideration of all matters presented in appeal, the appeal was denied on 24 May 2001. Although there is no documentation of the applicant's demotion, his rank/grade is shown as private (PV2)/E-2 on all succeeding documents.

12. On 8 August 2001, the applicant's immediate commander notified the applicant of the intent to initiate actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, paragraph 14-12b, for a pattern of misconduct. The specific reasons for this action were the applicant's aforementioned misconduct. He was advised that he was being recommended for a General, Under Honorable Conditions discharge, but the final determination of his characterization of service would be made by the separation authority. The applicant acknowledged receipt of the proposed separation notification on the same day.

13. On 8 August 2001, the applicant waived his rights to submit statements in his own behalf and to consult with consulting counsel and/or civilian counsel at no expense to the Government

14. On 8 August 2001, the applicant's immediate commander formally recommended his separation prior to the expiration of his term of service under the provisions of Army

Regulation 635-200, Chapter 14, paragraph 14-12b by reason of a pattern of misconduct. The interim commander concurred with the recommendation.

15. On 9 August 2001, the separation authority approved the recommendation and directed the applicant to be discharged with a General, Under Honorable Conditions characterization of service.

16. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged from the Regular Army on 11 October 2001, under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12b, by reason of Misconduct, with separation code "JKA" and reentry code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 4 years, 2 months, and 24 days of net active service this period and had completed his first full term of service.

17. Block 18 (Remarks) of his DD Form 214 shows he had an immediate reenlistment this period from 19990802 to 20011011 (indicating 2 August 1999 to 11 October 2001), but does not identify his continuous period of honorable service prior to reenlistment (see Administrative Notes).

18. The applicant provides the following documents that are available in their entirety for the Board's consideration.

a. A VA Rating Decision, dated 19 December 2023, shows he was awarded service-connected disability for the following conditions:

- Degenerative arthritis with cervical spondylosis
- Radiculopathy, left upper extremity
- Radiculopathy, right upper extremity
- Patellofemoral pain syndrome with tendinopathy and tendonitis, left knee
- Patellofemoral pain syndrome with tendinopathy and tendonitis, right knee
- Tinnitus

b. The applicant's resume which depicts his employment and education history.

c. A letter wherein the author rendered favorable comments regarding the applicant's character.

19. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

20. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR) (AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant has applied to the ABCMR requesting an upgrade of his 11 October 2001 discharge characterized as under honorable conditions (general). He did not provide a reason why this correction should be made.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of service under consideration shows he entered the regular Army on 18 July 1997 and was discharged under honorable conditions (general) on 11 October 2001 under the separation authority provided by paragraph 14-12b of AR 635-200, Personnel Separations – Enlisted Personnel (1 November 2000): Patter of misconduct. It does not list a period of service in a hazardous duty or imminent danger pay area.

d. On 8 August 2001, the applicant's company commander informed him of the initiation of separation action under paragraph 14-12b of AR 635 200: "The reasons for my proposed action are based upon two Article 15's for AWOL (absence without leave)."

e. On 9 August 2001, the Commander of the 173rd Airborne Brigade approved the applicant's separation and directed he be separated with a characterization of service of Under Honorable Conditions (General).

f. No medical documentation was submitted with the application and there are no clinical encounters in the EMR.

g. JLV shows he has been awarded multiple VA service-connected ratings for musculoskeletal conditions and one for tinnitus. He was diagnosed with unspecified adjustment disorder in 2018 but it was not service connected by the VA.

h. There is no evidence the applicant had a mental health or other medical condition during his service which would have then contributed to or would now mitigate his the UCMJ violations and thereby warrant consideration of an upgrade under liberal consideration guidelines.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO: Unspecified adjustment disorder per se does not mitigate a Soldier's actions without a secondary mitigating behavioral health condition such as PTSD or depression.

(2) Did the condition exist or experience occur during military service? NO: There is no contemporaneous medical documentation supporting the condition existed during his service and it was not service connected by the VA

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Character of service upgrade: Deny. The applicant displayed a pattern of misconduct in the form of multiple NJPs and AWOL. As a result, his chain of command initiated separation action against him. The applicant was discharged with an under honorable conditions (general) characterization of service. The Board found no error or injustice in his available separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board agreed with the medical reviewer's finding that based on available information/evidence, there is insufficient evidence to support the applicant had a behavioral health condition during military service. Also, although he provides a character reference letter in support of a clemency determination, the Board determined such letter is insufficient and does not outweigh the pattern of misconduct for which he was discharged. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. Continuous honorable service: Grant. The Board noted that the applicant's service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
█	█	█	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending his DD Form 214 ending on 11 October 2001 to show in the Remarks Block "CONTINUOUS HONORABLE SERVICE FROM 19970718 – 19990801."
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading his discharge.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, USC, Section 1552(b), provides that applications for correction of military records must be filed within three years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable

or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

5. Army Regulation 635-5 (Personnel Separations – Separation Documents), in effect at the time, prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes the standardized policy for preparing and distributing the DD Form 214. It states the DD Form 214 provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

a. Paragraph 1-4b(5) of the regulation in effect at the time stated that a DD Form 214 would not be prepared for enlisted Soldiers discharged for immediate reenlistment in the Regular Army.

b. Paragraph 2-4h(18) of the regulation currently in effect states that item 18 documents the remarks that are pertinent to the proper accounting of the separating Soldier's period of service. Subparagraph (c) states that for enlisted Soldiers with more than one enlistment period during the time covered by the DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify the appropriate dates. For Soldiers who have previously reenlisted without being issued a DD Form 214 and who are later separated with any characterization of service except "honorable," enter "CONTINUOUS HONORABLE ACTIVE SERVICE FROM" (first day of service which DD Form 214 was not issued) UNTIL (date before commencement of current enlistment)." Then, enter the specific periods of reenlistments as prescribed above.

6. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD); traumatic brain injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial.

However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//