

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 December 2024

DOCKET NUMBER: AR20240003806

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect:

- general under honorable conditions discharge was upgraded to honorable
- awarded the Army Good Conduct Medal
- a personal appearance before the Board via video or telephonically

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 for service ending 16 June 1998

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 requests the correction of his DD Form 214 to reflect his character of service was upgraded from general under honorable conditions to honorable and he was awarded the Army Good Conduct Medal. The applicant's application indicated he provided statements to support his request; however, the statements were not provided.

3. A review of the applicant's service records shows:

a. On 17 June 1994, the applicant enlisted in the Regular Army for 4-years.

b. On 26 August 1996, Permanent Orders Number 241-3, issued by Headquarters, 1st Squadron (Air), 17th Cavalry, the applicant was awarded the Driver and Mechanic Badge with Driver Device – "W" effective 26 August 1996.

c. On 20 March 1998, the applicant received a General Officer Memorandum of Reprimand for driving while intoxicated on 1 March 1998. Stated in the reprimand, the Army and the command consistently emphasized the tragic consequences of driving after consuming alcohol. There was no excuse for his extremely irresponsible and improper behavior. His actions fell below the minimum standards expected of a Soldier. The applicant acknowledge receipt of the reprimand and elected not to make a rebuttal.

d. On 31 March 1998, the applicant's immediate commander notified the applicant that was initiating separation action under the provisions of chapter 14-12b of Army Regulation (AR) 635-200 ((Personnel Separations – Enlisted Personnel), for a pattern of misconduct. The reason for the commander's action is that several adverse incidents during the applicant's term of service indicate a pattern of continuous misconduct that will no longer be tolerated by this command. The commander recommended an under other than honorable conditions character of service and advised him of his rights.

e. The applicant acknowledged receipt of the commander's notification. He consulted with counsel who advised him of his rights. Defense Counsel responded to the commander and stated: The applicant requests an administrative board to hear his case based upon recommendation of a discharge under other than honorable conditions. The undersigned counsel will represent the applicant during this proceeding.

(1) Defense Counsel requested the commander remove the record of nonjudicial punishment, dated 26 September 1998, from the file. This is based upon the following: The applicant was never afforded legal counsel before this punishment was imposed. After a careful check of the records in this office and a conversation with the applicant's squad leader, he determined that the applicant was not afforded counsel prior to being punished. This is in direct violation of AR 27-10 (Military Justice) procedures for imposing nonjudicial punishment.

(2) The record of nonjudicial punishment contains a charge of Willfully Damaging Military Property for the soldier's alleged act of injuring himself. Because a soldier is not "military property" under the law, this charge is unfounded.

f. On 31 March 1998, the applicant's commander initiated separation against him under the provisions of AR 635-200 paragraph 14-12b (Patterns of Misconduct) for several adverse incidents during his term of service which indicated a pattern of continuous misconduct which would no longer be tolerated. The recommendation shows the applicant was reduced in rank to private first class/E-3 effective 26 September 1997. The applicant was notified of the initiation of separation and he was being recommended for a under other than honorable conditions discharge.

g. On 28 April 1998, the applicant's battalion commander recommended the applicant be separated with a general under honorably conditions discharge.

h. On or about 28 April 1998, the separation authority approved the request for separation under the provisions of AR 635-200, paragraph 14-12b and directed he be issued a general under honorable conditions discharge.

i. On 16 June 1998, the applicant was discharged from active duty under the provisions of AR 635-200, paragraph 14-12b with a general under honorable conditions discharge. DD Form 214 shows he completed 4 years of service. It also shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): National Defense Service Medal, Army Service Ribbon, Expert Marksmanship Qualification Badge with Rifle Bar and Parachutist Badge
- Item 18 (Remarks): Member has not completed first term of service
- Item 26 (separation Code) shows JKA
- Item 27 (Reentry Code) shows "3"
- Item 28 (Narrative Reason for Separation) shows misconduct

#### BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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. Army Good Conduct Medal: Grant. The applicant serve duty from 17 June 1994 to 16 June 1998. He completed 4 years of active service. He qualified for award of the Army Good Conduct Medal based on his first 3 years of consecutive active service during the period 17 June 1994 through 16 June 1997, with no commander's disqualification memo or derogatory information during this period. It wasn't until March 1998 when he received a GOMOR and separation action was initiated against him. Therefore, absent any derogatory information n file, the Board determined he met the criteria for this award.

b. Discharge upgrade: The applicant received a GOMOR for driving while intoxicated. His commander stated several adverse incidents during the applicant's term of service indicate a pattern of continuous misconduct that will no longer be tolerated by this command. As a result, his chain of command initiated separation action against him. He was accordingly discharged with an under honorable conditions (general)

BOARD VOTE:

:	:	:	GRANT FULL RELIEF
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

1. In addition to the correction addressed in Administrative Note(s) below, 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:

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 general discharge to honorable.

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ADMINISTRATIVE NOTE(S):

1. A review of the records listed below (enclosed) is sufficient to substantiate correction of the DD Form 214 without action by the Board by adding in Item 13; Driver and Mechanic Badge with Driver Device "W"
2. Please correct the applicant's DD Form 214 by adding the item shown in paragraph 1 above. Provide the applicant a copy of the corrections. Please ensure that the corrections are recorded in the applicant's official military personnel record.

REFERENCES:

1. Title 10, USC, section 1552(b), provides that applications for correction of military records must be filed within 3 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 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.
3. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons.
  - a. Paragraph 3-7a (Honorable Discharge), an honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his period of enlistment.
  - b. Paragraph 3-7b (General Discharge), a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 14-12b (A Pattern of Misconduct), a pattern of misconduct consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline which includes conduct violative of the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army regulations, civil law and time honored customs and traditions of the Army.

4. AR 600-8-22 (Military Awards), implements a part of the Army Awards Program. It prescribes Department of the Army (DA) policy, criteria, and procedures for individual and unit military awards and foreign decorations and badges.

a. Chapter 4, section I (Army Good Conduct Medal), Regular Component enlisted Soldiers are eligible for award of the Army Good Conduct Medal for qualifying service beginning on or after 1 September 1982. The Army Good Conduct Medal qualification period may commence anytime during the 3-years immediately preceding the 1 September 1982 effective date.

b. Paragraph 4-6 (Qualifying eligibility criteria for the Army Good Conduct Medal), throughout a qualifying period, each enlisted Soldier must meet all the following criteria for an award: the immediate commander evaluates the Soldier's character as above reproach and the record of service indicates that the Soldier has:

- Willingly complied with the demands of the military environment
- Been loyal and obedient to their superiors
- Faithfully supported the goals of their organization and the Army
- Conducted themselves in an exemplary manner as to distinguish them from fellow Soldiers

While any record of non-judicial punishment or unfavorable action could be in conflict with recognizing the Soldier's service as exemplary, such record should not be viewed as automatically disqualifying. The commander will analyze the record, considering the nature of the infraction and the circumstances under which it occurred and when.

c. Paragraph 4-7 (Disqualification for the Army Good Conduct Medal), conviction by courts-martial terminates a period of qualifying service. A new period begins the following day after completion of the sentence imposed by the court-martial. Individuals whose retention is not warranted or for whom a bar to reenlistment has been approved are not eligible for award of the Army Good Conduct Medal. Individuals whose retention is not warranted under standards prescribed in AR 380-67 (Personnel Security Program) are not eligible for award of the Army Good Conduct Medal.

//NOTHING FOLLOWS//