

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 December 2024

DOCKET NUMBER: AR20240004581

APPLICANT REQUESTS: upgrade of his under other than honorable conditions discharge to honorable or (general) under honorable conditions. Also, an appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 is requesting an upgrade of his character of service from under other than honorable conditions to an honorable discharge or a character of service under honorable conditions (general) for the six years, eight months, and six days he served in the United States Army as an Infantry officer on active duty, willing to sacrifice his life for the freedom of every citizen in the country he loves.
 - a. The basis for this request is that he has just learned that he should not have received an other than honorable discharge because the authority for his discharge was Army Regulation (AR) 635-120 (Officer Resignations and Discharges) chapter 4 as indicated in my attached DD Form 214, which pertained to "separation because of unsatisfactory performance." Chapter 4 outlined the procedure and criteria for separating military personnel due to unsatisfactory performance, and not misconduct.
 - b. He did not defend himself and confront the allegations made against him. Before this incident and after being discharged. He had and has lived an honorable life. Out of shame and anxiety he has delayed filing this request until now.

3. The applicant was appointed as a Reserve Commissioned Officer of the Army on 27 June 1986.
4. Orders 106-120-A-987, issued by Headquarters, First Reserve Officers' Training Corps Region, Fort Bragg, NC on 21 April 1987, shows the applicant was ordered to active duty for a period of three years with a report date not earlier than 14 September 1986.
5. The applicant's record is void of the complete facts and circumstances that led to his separation. However, his service record contains a resignation in lieu of elimination, dated 22 April 1993, which shows elimination was approved. His discharge was to be under other than honorable conditions. Authority for separation will cite this message and chapter 4, AR 635-120 (Misconduct, Moral or Professional Dereliction). Separation Program Designator BNC.
6. The applicant selected 18 May 1993 as his separation date. He was notified on 4 May 1993 of his separation.
7. His DD Form 214 that shows he was discharged on 18 May 1993, under other than honorable conditions. It also shows he completed 6 years, 8 months, and 6 days of active service with no lost time. He was awarded or authorized Army Commendation Medal, Army Achievement Medal 1st oak leaf cluster, National Defense Service Medal, Army Service Ribbon, Expert Infantryman Badge, Parachutist Badge. It also shows:
 - Item 25 (Separation Authority): AR 635-120, chapter 4
 - Item 26 (Separation Code): BNC
 - Item 27 (Reentry Code): NA
 - Item 28 (Narrative Reason for Separation): Misconduct, moral
8. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.
9. By regulation, AR 15-185 (Army Board for Correction of Military Records (ABCMR)) states ABCMR members will review all applications that are properly before them to determine the existence of an error. The ABCMR will decide cases on the evidence of record. 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.
10. By regulation, AR 635-120 implemented the statutory provisions of Title 10, U. S. Code, governing active-duty officer resignations and discharges.

11. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's request and available military records, the Board determined there is insufficient evidence to support the applicant's contentions for an upgrade of his character of service from under other than honorable conditions to either honorable or general (under honorable conditions).

2. The Board recognized, the applicant served over six years on active duty as an Infantry officer and received several commendations, the record reflects that his separation was the result of a resignation in lieu of elimination for misconduct, moral or professional dereliction, under the provisions of Army Regulation (AR) 635-120, Chapter 4. The Board noted the applicant's assertion that he misunderstood the basis for his discharge and delayed filing his request due to shame and anxiety. However, the Board found no evidence of procedural error or injustice in the discharge process. The applicant's failure to confront the allegations at the time of separation does not mitigate the underlying misconduct nor justify an upgrade in character of service. Furthermore, the applicant did not provide any post-service achievements, character references, or documentation of rehabilitation or community contributions that might support a clemency determination.

3. In the absence of compelling evidence of error, injustice, or post-service meritorious conduct, the Board determined the characterization of service at the time of discharge was appropriate and remains warranted. Therefore, the applicant's request for an upgrade of his discharge was denied. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

| <u>Mbr 1</u> | <u>Mbr 2</u> | <u>Mbr 3</u> |
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|-----|-----|-----|----------------------|
| : | : | : | GRANT FULL RELIEF |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| XXX | XXX | XXX | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

X //SIGNED//

CHAIRPERSON

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, U.S. Code, 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. Army Regulation (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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

- a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
 - b. 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 635-120 (Officer Transfers and Discharges) implemented the statutory provisions of Title 10, U. S. Code, governing active-duty officer resignations and discharges.
- a. Chapter 4 of this regulation provides an officer who has been recommended for elimination from the service by a general court-martial convening authority or who has been selected by a Department of the Army Selection Board for elimination or to show cause why he/she should not be eliminated pursuant to chapter 5, AR 635-100, may tender a resignation in lieu of elimination action.
 - b. Paragraph 4-3 type of discharge certificate provides except as provided below, an officer whose resignation is accepted under the provisions of this chapter may be issued an Honorable Discharge Certificate (DD Form 256A), or a General Discharge Certificate (Under Honorable Conditions) (DD Form 257A), or a Discharge Certificate (Under Other Than Honorable Conditions) (DD Form 794A).
- An Honorable Discharge Certificate (DD Form 256A) will be issued when an officer's discharge is based solely upon substandard performance of duty
- c. Chapter 5 of this regulation provided that an officer could submit a resignation for the good of the service when court-martial charges were preferred against the officer with a view toward trial by general court-martial, the officer was under suspended sentence of dismissal, or the officer elected to tender a resignation because of reasons outlined in Army Regulation 635-100, paragraph 5-11a (7) (misconduct or moral or professional dereliction) prior to charges being preferred and prior to being recommended for elimination under the provisions of Army Regulation 635-100. The regulation provided that a resignation for the good of the service, when approved at Headquarters, Department of the Army, was normally accepted as being under other than honorable conditions.
4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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 based on equity, injustice, or clemency grounds, BCM/NRs 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//