

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 November 2024

DOCKET NUMBER: AR20240005283

APPLICANT REQUESTS:

- an upgrade of his general, under honorable conditions discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- Three letters of support

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 in effect he is grateful for this opportunity to upgrade his DD Form 214. He is much a better person today than he was 20 years ago. He is happily married with five children. He has no criminal record, and he pays his bills on time. Two of his kids have finished college and he has finished two years of college. He has two autistic children which can be very challenging at times. He has learned to be very patient and supportive. He thinks the board for consideration.

3. The applicant provides:

a. Character Letter 1: The writer has known the applicant for 54 years, highlighting his exceptional leadership skills and family orientation. As the oldest sibling and a father of two special needs children, the applicant demonstrates remarkable patience and love. He has served in the military and has been a reliable business partner known for his efficiency and attention to detail. The writer describes him as the cornerstone of the family and wholeheartedly recommends him for any future endeavors, emphasizing his value as an asset to any organization.

b. Character Letter 2: The applicant is described as a devoted father and husband with a generous spirit, married for 25 years. He is recognized for his ability to uplift others with humor and for being a supportive provider for both immediate and extended family. The letter highlights his commitment to their two autistic sons, showcasing his dedication and love despite facing his own challenges. Overall, the applicant is portrayed as a caring individual cherished by his family and friends.

c. Character Letter 3: The applicant's brother describes him as an upstanding citizen and a devoted family man. He is kind and consistently helps those in need, working hard to support his family. The writer notes the applicant's growth and maturity over the years and proudly mentions that he has no criminal record. The letter reflects a deep familial pride in the applicant's character and contributions to their family and community.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 28 September 1990.

b. The service record includes the applicant's medical evaluation for the purpose of administrative separation which indicated he was generally in good health. The applicant was marked qualified for service.

- Standard Form (SF) 88 (Report of Medical Examination) dated 23 April 1992
- SF 93 (Report of Medical History) dated 23 April 1992
- Mental Status Report dated 23 April 1992

c. A review of the applicant's records shows the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12c, for serious misconduct. The reason for his proposed action was for the applicant underwent three non-judicial punishments on separate occasions. On 23 June 1992, the applicant acknowledged receipt of the proposed action.

d. On 23 June 1992, after consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he understood if the recommendation for separation is approved, he can receive a general discharge
- he elected to submit matters on his own behalf
- he will be ineligible to apply for enlistment for a period of 2 years after discharge

e. A review of the applicant's records shows the immediate commander-initiated separation action against the applicant under the provisions of AR 635-200, Chapter 14-12c, for serious misconduct. The commander recommended a general, under honorable conditions discharge.

f. A review of the applicant's records shows the separation authority approved the discharge recommendation for separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12c for commission of a serious offense. He would be issued a general, under honorable conditions characterization of service.

g. On 10 September 1992, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 shows he completed 1 year, 11 months, and 13 days of active service with no lost time. The narrative reason for separation listed as "Misconduct (Commission of a Serious Offense)."

h. The complete facts and circumstances surrounding the applicant's discharge are unavailable for the Board to review.

5. By regulation AR 635-200, action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

6. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

7. In reaching its determination, the Board can consider the applicants 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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for misconduct with the commander citing several records of nonjudicial punishment. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during

separation. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. 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>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	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.



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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states 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.

b. Paragraph 3-7b (General Discharge) states 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. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

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 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.

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.

5. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//