

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 January 2025

DOCKET NUMBER: AR20240006091

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 14 May 1990
- Letter, Sheriff's Office, 28 July 2023
- Character Reference D_P_, 14 June 2023
- Character Reference A_S_, 5 July 2023
- Character Reference P_H_, 12 March 2024

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 his youth he made mistakes that he regrets. Unfortunately, it caused his career in the military to end sooner than he had wished. He enlisted in the Army in August 1980, and he was discharged in January 1990. For the past 27 years he has worked in the transportation business. The companies' management teams and coworkers consider him a valuable asset. They depend on him. He is reliable and a punctual employee. He has a positive outgoing personality and gets along well with others. He has been married for 36 years and have two daughters. He is an outstanding provider for his family; at times working three jobs. He considers himself to be reliable, dedicated, and an honorable man.
3. The applicant provides the following:

a. A letter from the Sheriff's Office, dated 28 July 2023, which states the applicant does not have an arrest record with the St. Johns County Sheriff's Office.

b. Three-character references, which state the applicant is loyal, dependable, has excellent character, and strong work ethic. He is an honorable man, who takes his responsibilities as a husband, father, and grandfather very seriously.

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

a. The applicant enlisted in the Regular Army on 9 September 1980. The highest grade he held was staff sergeant (SSG)/E-6.

b. A memorandum dated 3 March 1989, shows the applicant received a Letter of Reprimand from the Commanding General for operating a motor vehicle while his blood alcohol level was greater than or equal to .12%, which was a violation of Georgia law.

c. The applicant acknowledged receipt of the letter of reprimand and did not wish to make a rebuttal statement.

d. On 8 March 1989, the court found the applicant not guilty of driving under the influence (DUI) and guilty of driving without proof of insurance and speeding.

e. A letter from the Judge of Municipal Court, City of Hinesville, dated 27 April 1989, shows the applicant was charged with DUI on 28 February 1989. The applicant received a verdict of not guilty on the DUI charge based on insufficient evidence.

f. On 27 April 1989, the applicant's immediate commander recommended that the Letter of Reprimand be filed in the applicant's Military Personnel Record Jacket (MPRJ) for three years. The commander stated that applicant understood there was no excuse for his actions, but the applicant was found not guilty of DUI. The intermediate commanders echoed this recommendation.

g. On 9 May 1989, the Commanding General directed that the Reprimand be filed in the applicant's MPRJ for a period of three years unless sooner removed as required by Army Regulation (AR) 600-37 (Unfavorable Information).

h. The applicant was counseled for the following:

- 18 May 1989 – letter of indebtedness
- 16 June 1989 – financial counseling
- 24 August 1989 – borrowing money from Soldiers under his chain of command and bad checks
- 29 August 1989 – failure to pay a debt

- 18 September 1989 – counseling session concerning letter of indebtedness
- 19 September 1989 – initiation of chapter 14 for conduct unbecoming of a noncommissioned officer (NCO) and failure to control his debts

i. The applicant underwent a medical examination on 20 September 1989. The examining physician noted the applicant was qualified for separation/chapter.

j. On 26 October 1989, he accepted nonjudicial punishment, under field grade Article 15, Uniform Code of Military Justice (UCMJ) for the following misconduct:

- on or about 29 March 1989, wrongfully using his position as a squad leader to borrow \$750.00 from his subordinate, specialist (SPC) V_E_, money which he failed to repay.
- on or about 26 April 1989, wrongfully using his position as squad leader to borrow \$500.00 from his subordinate private (PV2) T_U_, money which he then later failed to repay.
- on or about 22 May 1989, wrongfully using his position as squad leader to borrow \$1000.00 from his subordinate PV2 J_R_, money which he then later failed to repay.

k. His punishment included reduction to sergeant (SGT)/E-5, forfeiture of \$612.00 a month for two months (suspended for 120 days to be automatically remitted if not vacated on or before 26 February 1990), and 45 days of extra duty.

l. On 16 November 1989, the applicant underwent a mental status evaluation. The Behavioral Science Specialist cleared the applicant for any administrative action deemed appropriate by the command.

m. On 21 November 1989, the applicant's immediate commander notified the applicant of his intent to initiate separation actions against him under the provisions AR 635-200 (Personnel Separations – Enlisted Personnel), chapter 14-12c, by reason of misconduct. The commander listed the following reason for the proposed action: because of the applicant's commission of serious offenses. The commander informed the applicant that he was recommending he receive an under other than honorable conditions discharge, and he explained his rights.

n. On 21 November 1989, his immediate commander formally initiated separation under the provisions of AR 635-200, chapter 14, paragraph 14-12c, for commission of serious offenses and recommended the applicant receive an under other than honorable conditions characterization of service.

o. On 30 November 1989, the applicant acknowledged he was advised by his consulting counsel of the basis for the contemplated action to separate him for

commission of a serious offense under AR 635-200, chapter 14, and its effects; of the rights available to him. He requested a personal appearance and consideration of his case by an administrative separation board and submitted a statement in his own behalf.

p. On the same date, the applicant submitted a statement in support of his request for retention. He stated, in effect:

(1) He had been in the military for nine years and had been a good Soldier. He served his country proudly, both in the states and overseas. He received many awards, certificates, and outstanding enlisted evaluation reports. He was a dedicated leader, determined to train his men to the best of his ability. There was no question to his duty performance, bearing or dedication.

(2) He was given an Article 15 for borrowing the money from his subordinates and he lost a stripe. He understood the severity of the offense and he was paying the price by losing his E-6 rank. However, his performance, bearing, motivation, and dedication, past and present, attested to his ability to continue as a productive Soldier in the military, and asked that his statement be considered when deciding his future in the military.

q. On 14 December 1989, the applicant's intermediate commander (battalion) recommended approval of the separation and recommended the applicant's service be characterized as under other than honorable conditions. The brigade commander echoed this recommendation.

r. On 22 February 1990, the applicant was barred from reenlistment.

s. On 4 April 1990, the applicant appeared before an administrative separation board. The board carefully considered the evidence properly before it and found the allegation(s) in the notice of separation as to commission of a serious offense was supported by a preponderance of the evidence and warranted separation. The board noted that the applicant was not desirable for further retention in the service of the United States Army and rehabilitation was not deemed possible. The board recommended that the applicant be discharged from the service and issued an under other than honorable conditions discharge.

t. A memorandum dated 5 April 1990, shows two members of the board made a different decision from the majority and believed it should be considered. The two members, master sergeant (MSG) S_W_ and chief warrant officer two (CW2) A_H_ stated that the discharge recommended by the board was not appropriate. The applicant was punished for the offense committed by receiving a Field Grade Article 15. The Soldier [applicant] exemplified character of a good Soldier, except for the recent

infraction. They stated he now must pay for this mistake, as shown in the summarization of the board proceedings. By separation under other than honorable conditions, he could continue to pay for a long time. The two board members recommended that the type of discharge be changed to a general, under honorable conditions.

u. On 25 April 1990, the separation authority approved the recommendations of the board, directed the applicant be issued an under other than honorable conditions discharge, and be reduced to the lowest enlisted rank.

v. The applicant was discharged on 14 May 1990. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct – commission of a serious offense, in the rank of private (PV1)/E-1. His service was characterized as under other than honorable conditions. He completed 9 years, 8 months, and 6 days of net active service this period. This form also shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, Overseas Service Ribbon (2), Army Good Conduct Medal (2nd Award), Army Achievement Medal (1st Oak Leaf Cluster), NCO Professional Development Ribbon with numeral 2, and the Expert Marksmanship Qualification Badge (rifle and grenade)
- Item 18 (Remarks): Immediate reenlistments this period: 9 September 1980 – 31 March 1983; 1 April 1983 – 28 October 1987. Extension of service was at the request and for the convenience of the Government.
- Item 26 (Separation Code): JKQ
- Item 27 (Reentry Code): RE-3

5. On 4 December 1991, the Army Discharge Review Board denied the applicant's request for an upgrade of his characterization of service. The Board concluded that the applicant's discharge was both proper and equitable.

6. Regulatory guidance states when an individual is discharged under the provisions of Chapter 14, AR 635-200 for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

7. 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 partial relief was 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 petition and available military records, the Board determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct of financial improprieties involving subordinates, multiple counseling statements for indebtedness, and nonjudicial punishment under Article 15 of the UCMJ.

2. The Board found the applicant's nearly ten years of active service, multiple awards and decorations, and positive evaluations prior to the misconduct. Notably, two members of the administrative separation board dissented from the majority recommendation, citing the applicant's overall character and performance, and recommended a general discharge. The applicant's own statement reflected remorse and a desire to continue serving honorably. Furthermore, the Board recognized the applicant's post-service documentation, including a letter from the St. Johns County Sheriff's Office confirming no arrest record, and three-character references attesting to his loyalty, dependability, and strong moral character. These letters describe the applicant as a devoted family man and a responsible member of his community. The Board finds these materials credible and indicative of post-service rehabilitation.

3. Although the applicant's misconduct was serious and warranted separation, the Board agreed, that the applicant's overall record of service, combined with his post-service conduct and character references, merit partial relief. Therefore, the Board granted partial relief to upgrade his character of service to general, under honorable conditions.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

1. In addition to the administrative notes annotated by the Analyst of Record (below the signature), 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 reissuing the applicant a DD Form 214 showing his characterization of service as under honorable (general) conditions.

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 an upgrade of his characterization of service from under other than honorable conditions to honorable.

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214 for the period ending 14 May 1990, is missing required entries. As a result, amend the DD Form 214 by adding the following entries in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE ACTIVE SERVICE FROM 800909 UNTIL 871028

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, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. 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 considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexuality, security reasons, and for the good of the service.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provide the specific authorities (statutory or other directives), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. In effect at the time, the regulation showed Soldiers separated under the provisions of AR 635-200, paragraph 14-12c, with a narrative reason of misconduct – commission of a serious offense, would receive SPD code "JKQ."

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.

- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification

5. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

6. Army Regulation 635-8 (Personnel Separations – Separation Processing and Documents), prescribes policy and procedural guidance relating to transition management. It establishes the standardized policy for preparing and distributing the DD Form 214. It states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. It states for block 18 (remarks):

a. Mandatory entry: "SOLDIER (HAS) OR (HAS NOT) COMPLETED FIRST FULL TERM OF SERVICE." This information assists the State in determining eligibility for unemployment compensation entitlement.

b. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify inclusive dates for each period of reenlistment.

c. For Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter "Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment). Then, enter the specific periods of reenlistment as prescribed above.

7. Army Regulation 635-5 (Personnel Separations – Separation Documents), in effect at the time, states, item 18 (Remarks), this must be the first entry in block 18. Enter list of reenlistment periods for which a DD Form 214 was not issued, if applicable, e.g., "Immediate reenlistments this period: 761218-791001; 791002- 821001." However, for soldiers who have previously reenlisted without being issued a DD Form 214 and who are being separated with any characterization of service except "Honorable," the following statement will appear as the first entry in block 18, "Continuous Honorable Active Service From (first day of service for which a DD Form was not issued, e.g., 761218) Until (date before commencement of current enlistment, e.g., 821001); then enter the specific periods of reenlistments as prescribed above.

//NOTHING FOLLOWS//