

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 December 2024

DOCKET NUMBER: AR20240006166

APPLICANT REQUESTS:

- an upgrade of is under other than honorable conditions discharge to honorable
- restoration of rank and pay grade
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- National Personnel Records Center (NPRC) Letter, 16 November 2021
- Four Standard Forms (SF) 88 (Report of Medical Examination)
- Medical Records (19 pages)

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 restoration of his rank, pay grade, and an upgrade of his discharge to honorable.

a. He was wrongfully discharged after 10 years of outstanding service and promotions from private to staff sergeant (SSG), E-6, as a platoon sergeant with outstanding evaluations. He attempted to advance his career by applying to various schools such as Drill Sergeant, Recruiter, Ranger School, and Airborne School yet he was denied due to his high blood pressure. However, his health was not a concern when he was ordered to participate in physical training and other strenuous activities.

b. He was forced to remain at the same installation for over five years. Despite his attempts to reenlist for another duty assignment, he was informed his options were to remain at this present station or separate due to expiration of term of service (ETS). The applicant further believes he was denied promotion and education opportunities. His position as Platoon Sergeant included assisting officers, but he was denied military advancements. He was deterred from being "all he could be" as a result of bias displayed against him.

c. The unit received orders to Iraq and higher-ranking noncommissioned officer (NCO) were assigned to garrison unit rather than combat units which deteriorated knowledge and experience. The platoon required training. His E-7 took over the platoon and the applicant believed he should have been assigned as a heavy weapons squad leader. He was assigned as a radio operator and moved to the brigade. He felt he had been demoted from platoon sergeant to private as a result of the new assignment. Although others were placed in positions according to their rank, he felt bias and racism led to his assignment.

d. He recalls an incident in Iraq where he cautioned a private first class (PFC) about the dangers of baby cobras and to ensure the area was "squared away" before his departure for safety purposes. The PFC refused and complained to the senior officer he was a driver for, ultimately leading to the applicant being told to pack his belongings because he was being moved to Alpha Company. He was denied rest and was subsequently accused of sleeping while on duty. A difficult meeting with the first sergeant (1SG), the Captain, and the platoon sergeant led him to walk out to calm down after being called a liar. He was then accused by his platoon sergeant of being absent without leave (AWOL). He had no way to leave Iraq even if he elected to and was not familiar with his surroundings. The applicant was subsequently court-martialed by an all-white panel and he had an inexperienced platoon sergeant who displayed poor representation.

e. He returned stateside to another court-martial for reasons unknown to him with a second all white panel. He received two court-martials in a six month window, demoted to E-1, and discharged from the military. He believes the process was racially motivated. A superior officer that knew applicant's professional knowledge refused to be on the panel to degrade and embarrass him. The applicant requests a personal appearance to express his concerns and answer any questions regarding his unjustified discharge.

3. The applicant provides:

a. A letter from NPRC dated 16 November 2021, notified the applicant copies of his service record were provided.

b. Four SF 88 show the applicant received medical examinations to determine his eligibility for the following:

- 15 January 1980 – enlistment
- 25 April 1983 – airborne training
- March 1988 – not listed
- 28 July 1989 – drill sergeant

c. The applicant's medical records (19 pages) for treatment received during his service period.

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

a. He enlisted in the Regular Army on 20 February 1980.

b. His DA Form 2-1 (Personnel Qualification Record) shows his foreign service included two one-year tours in Korea, and a deployment to Saudi Arabia from 11 September 1990 through 8 April 1991. It also lists appointments and reductions as follows:

- 20 February 1980 – private (PVT), E-1
- 20 August 1980 – private (PV2), E-2
- 20 February 1981 – PFC
- 15 June 1981 – specialist (SPC), E-4
- 5 November 1983 – sergeant (SGT), E-5
- 21 July 1986 – SSG
- 9 March 1991 – SPC
- 3 October 1991 - PVT

c. On 9 March 1991, he was convicted by a general court-martial of two specifications of disobeying a lawful order. The charges of dereliction of duty were dismissed prior to pleas and he was found not guilty of disrespect. His sentence included reduction to the grade of E-4 and to be reprimanded.

d. On 24 March 1991, the convening authority approved the sentence and except and ordered it executed.

e. On 11 June 1991, the corrected action shows the applicant was reprimanded for disobeying a lawful order from is 1SG and his commander. Under normal conditions, failure to obey a lawful order is serious; however, his failure to obey a lawful order occurred during Operation Desert Storm and carried out in the presence of several junior Soldiers, which was more egregious. His conduct demonstrated a serious

deficiency in loyalty to his command and caused the convening authority to believe he was not suitable for continued service in a leadership position.

f. On 1 April 1991, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12 b & c for commission of a serious offense and a pattern of misconduct. The reasons for his proposed action were assaulting PFC F__ by grabbing him up by his shirt collar, failure to obey a lawful order, dereliction in the performance of his duties, and for violating the uniform and shaving policies.

g. On 1 April 1991, after consulting with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he may be ineligible for many or all benefits as a Veteran under both Federal and State laws
- he may apply to the ADRB or the ABCMR for upgrading
- he will be ineligible to apply for enlistment in the U.S. Army for a period of 2 year following discharge
- he elected to have his case considered before an administrative separation board; however, on 21 September 1991, he waived his appearance

h. On 4 April 1991, the immediate commander-initiated separation action against the applicant for commission of a serious offense and a pattern of misconduct. He recommended that his period of service be characterized as under other than honorable conditions.

i. On 7 April 1991, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14. He would be issued an under other than honorable conditions discharge.

j. On 11 October 1991, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 11 years, 7 months, and 22 days of active service with no lost time. Block 18 (Remarks) listed two periods of reenlistment from 20 February 1980 through 19 January 1984 and 2 January 1984 through 5 Jun 1989. He was assigned separation code JKA and the narrative reason for separation listed as "Misconduct - Pattern of Misconduct," with a reentry code of 3. It also shows he was awarded or authorized:

- Army Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade
- Expert Infantryman Badge
- Air Assault Badge
- Noncommissioned Officer Professional Development Ribbon (2)
- Army Commendation Medal (2)
- Overseas Service Ribbon (2)
- Army Good Conduct Medal (3)
- Multi-National Forces and Observers Medal
- Combat Infantryman Badge
- Southwest Asia Service Medal with two bronze service stars
- National Defense Service Medal

5. A review of the applicant's records shows his DD Form 214 omitted administrative entries in the Remarks block. The continuous honorable service and awards will be added to his DD Form 214 as administrative corrections and will not be considered by the Board.

6. On 23 April 1991, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for a change in the character and/or reason of his discharge.

7. 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.

8. 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.

9. By law, with respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

10. 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 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 of in-service mitigating factors to overcome the pattern of misconduct. The Board found no error or injustice that warrants restoration of the applicant's rank and pay grade.

2. The Board carefully considered the applicant's periods of honorable service and his awards and decorations however, the Board agreed the applicant's pattern of misconduct could not be mitigated that warrants a discharge upgrade. Furthermore, the Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to honorable. Therefore, the Board denied relief.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

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:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows his DD Form 214 omitted awards and administrative entries in the Remarks block. As a result, amend the DD Form 214 by adding the following:

- Kuwait Liberation Medal - Kuwait
- Kuwait Liberation Medal – Saudi Arabia
- Block 18 (Remarks) – “Service in Southwest Asia from 19900911 to 19910408” and “Continuous Honorable Active Service from 19800220 until 19890605.”

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 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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. 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. 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.

4. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

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 (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//