

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 March 2025

DOCKET NUMBER: AR20240007525

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge,

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record)

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 was wrongfully accused of taking a foreign weapon while in service to the country in Desert Storm.
3. A review of the applicant's service records shows:
  - He enlisted in the U.S. Army Reserve on 21 March 1979 for six years
  - On 1 April 1983 he reenlisted in the Regular Army for three years
  - On 5 April 2007, he reenlisted for four years
  - He served in Southwest Asia from 7 January 1991 the through date is illegible on the DD Form 214
4. DD Form 458 (Charge Sheet) shows court martial charges were preferred on 8 October 1991, for the charges/specifications of:
  - Failing to obey a lawful general order, by wrongfully taking a personal war trophy, 5 AK MS 47 Assault Rifles
  - Was derelict in the performance of his duties in that the said SSG A. W., willfully failed to turn in all captured military property as it was his duty to do so
  - Failed to give notice and turnover to proper authority without delay certain captured property which had come into his possession to wit: 5 AK MS 47 Assault Rifles of a value in excess \$100

- Steal 5 AK MS Assault Rifles, military property of the United States Government, of a value in excess of \$100
- On or about 17 May 1991, in a sworn statement, wrongfully and unlawfully make under lawful oath a false statement

5. On 18 October 1991, he requested separation under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10 in lieu of court-martial.

6. His chain of command recommended approval.

7. On 16 November 1991, the separation authority approved separation under the provisions of AR 635-200, chapter 10. He was directed to be separated from the service with an under other than honorable conditions discharge certificate.

8. Accordingly, he was discharged under conditions other than honorable on 5 December 1991. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 13 [vice Chapter 10]. It also shows he completed 12 years, 7 months, and 14 days of active service this period.

9. There is no evidence the applicant applied to the Army Discharge Review Board within that Board's 15-year statute of limitations.

10. 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:

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 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 pending court-martial charges for failing to obey a lawful general order, taking a personal war trophy (five assault rifles), was derelict in his duties, failure notify his chain of command that he came into possession of the assault rifles, and making a false statement. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated

characterization of service. However, the Board notes the applicant's DD Form 214 does not reflect his prior continuous service and found this statement should be added to his DD Form 214. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust but granted partial relief by adding his prior continuous service.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

|      |      |      |                      |
|------|------|------|----------------------|
| :    | :    | :    | GRANT FULL RELIEF    |
| :XXX | :XXX | :XXX | GRANT PARTIAL RELIEF |
| :    | :    | :    | GRANT FORMAL HEARING |
| :    | :    | :    | DENY APPLICATION     |

BOARD DETERMINATION/RECOMMENDATION:

1. 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 amending the applicant's DD Form 214 by adding in Remarks the statement, "Continuous Honorable Service 21 March 1979 to 1 April 1983".
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 the applicant's characterization of service.

X //SIGNED//

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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) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel, it states:

a. Chapter 10 is applicable to members who had committed an offense or offenses for which the authorized punishment included a bad conduct or dishonorable discharge could submit a request for discharge for the good of the service. The request could be submitted at any time after the charges had been preferred. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service has generally met standards of acceptable conduct and performance of duty for Army personnel.

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

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and 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. 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 on the basis of 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. 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//