

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2025

DOCKET NUMBER: AR20240008255

APPLICANT REQUESTS: correction of his records to reflect:

- entitlement to retroactive retirement and pay backdated to the date of his original request for retirement
- upgrade of his under honorable conditions (General) characterization of service

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

- DD Form 149 (Application for Correction of Military Record), 20 May 2024
- Counsel Statement, with Exhibits (Ex) A through Ex J
- Ex A – DD Form 214 (Certificate of Release or Discharge from Active Duty), 1 May 2003
- Ex B – Statement of Daughter Ms. OH____, 5 March 2022
- Ex C – Statement of Daughter Ms. VH____, 3 March 2022
- Ex D – General Officer Memorandum of Record (GOMOR), 5 May 2020
- Ex E – Request for Voluntary Retirement, 7 June 2022
- Ex F – Response to Reenlistment Prohibition, 11 May 2021
- Ex G – DD Form 4 (Enlistment/Reenlistment Document), 18 June 2010
- Ex H – memorandum, Office of the Deputy Chief of Staff, G-1, Request for Exception to Policy, 14 June 2022
- Ex I – memorandum, Applicant response to nonjudicial punishment (NJP), 21 July 2022
- Ex J – memorandum, Headquarters and Headquarters Company (HHC), 13th Expeditionary Sustainment Command (ESC), Findings and Recommendations of Army Regulation 15-6 Investigation, 4 October 2021

FACTS:

1. Counsel provides a timeline of events leading to his discharge in November 2022. Counsel's complete presentation is available for Board review. The applicant states through counsel:

a. He has exhausted all administrative remedies to correct the errors and injustices of his date of promotion. He served his nation for over 23 years and is a Veteran of the

Iraq and Afghanistan conflicts. He was awarded the Combat Action Badge. He has over 6 years of foreign service.

b. U.S. Army Criminal Investigation Command (CID) found he committed a sexual assault in October 2019 despite his accuser recanting all her allegations (Ex B).

d. The basis for his application are:

- there was a lack of basis for the actions taken by the administrative separation board
- the two alleged victims failed to appear at the hearing and Ms. OH___ recanted her allegations and stated the applicant should receive no punishment (Ex E)
- he requested retirement three times, but these were either delayed or improperly denied
- he was improperly prohibited from retiring in lieu of qualitative management program separation
- his expiration term of service (ETS) was improperly extended on 14 June 2022 and approved the same date
- the commander's recommendations of DA Form 4187 were altered or failed to be corrected
- an Equal Opportunity (EO) complaint findings and recommendations memo cited a trend of administrative negligence and a historical trend of allegations against the applicant which may create a perception of unfairness (Ex J)

2. The applicant provides through counsel, copies of:

a. A Statement from Ms. OH___, dated 5 March 2022, recanting her earlier allegations of child molestation along with other derogatory comments against her father (Applicant). Ms. OH___ wrote, the accusations and remarks were inexact as (their family) was dealing with challenges and growing pains in (her) youth.

b. A statement from Ms. VH___, dated 3 March 2022, similar to the written statements of Ms. OH___, in effect recanting her previous original allegations of child molestation against the applicant, her father.

c. A memorandum issued from HHC, 13th ESC, dated 4 October 2021, subject: Findings and Recommendations for Army Regulation 15-6 Investigation, noting, in part, the allegations of discrimination on the basis of race and sex by (name redacted) were unsubstantiated. "Although there is no evidence to support an [EO] violation, there is a trend of administrative negligence and a historical trend of allegations against [applicant] that may create a perception of unfairness." The full 5-page memorandum is available for Board review.

d. A memorandum from Headquarters, III Corps and Fort Hood, dated 21 July 2021, in which the commanding officer responded to his Article 138 complaint, dated 6 July 2022. This memorandum notes, his complaint regarding alterations of his application for retirement, had been previously addressed. The complete memorandum is available for Board review.

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

a. On 20 March 1996, the applicant enlisted in the Regular Army.

b. On 1 May 2003, he was discharged by reason of misconduct with a general, under honorable conditions characterization of service. He completed 7 years, 1 month, and 12 days of active service. The DD Form 214 for this period shows he completed continuous honorable service from 20 March 1996 to 19 March 2001 (5 years).

c. On 16 August 2006, he reenlisted in the Regular Army for, following service in the Army National Guard.

d. On 5 May 2020, he was reprimanded by the Commanding General, Headquarters, 13th ESC, for misconduct. The GOMOR reads, in part:

(1) "You are hereby reprimanded for abusive sexual contact. On 19 October 2019, you allegedly stuck your hand up the shorts of your subordinate until you reached her panty line. The said action was performed without the Service Member's consent. Your actions are unacceptable, contrary to Army Values, and will not be tolerated."

(2) This is an administrative reprimand imposed under the provisions of Army Regulation 600-37 and not as punishment under Article 15, Uniform Code of Military Justice.

(3) A cross reference sheet pertaining to Law Enforcement Report (LER) Number xxxxxx-2019-CIDxx-xxxxxx, dated 20 February 2019 was attached to the GOMOR, the LER with its findings and recommendations, was not included with the GOMOR.

e. On 15 June 2020, the Commanding General, 13th ESC, directed the GOMOR be filed in his permanent record.

f. On 8 June 2021, his command notified him he had been denied continued service under the Qualitative Management Plan (QMP) and counseled him on the options available to him. On the same date he elected to apply for a regular retirement within 30 days of completing the form for a retirement date of no later than 1 December 2021.

g. On 31 May 2022, his unit provided a memorandum for record serving as a letter of lateness on his behalf noting miscommunication between legal and his current command team delayed his retirement package submission after initially being denied. On 7 March - 8 March 2022, he was referred to an administrative separation board. Headquarters Department of the Army was the approving authority of the results of the Board. He was due to separate on 30 June 2022. It was recommended he submit his retirement package in case the decision did not come back prior to his ETS.

h. On 7 June 2022, he requested voluntary retirement under the QMP with a retirement date of 30 June 2022.

i. On 14 June 2022, the Officer of the Deputy Chief of Staff, G-1, approved his request for an exception to policy to retain him beyond his ETS to allow his command to complete administrative separation processing pursuant to Army Regulation 635-200 (Active Duty Administrative Separations), paragraph 14-12c, based on the facts of his case.

j. On 3 November 2022, the Acting Assistant Secretary of the Army (AASA), Manpower and Reserve Affairs (M&RA), approved his separation with a general, under honorable conditions characterization of service. The AASA, M&RA further noted that the presentation of his prior enlistment misconduct was harmless.

k. On 30 November 2022, the applicant was discharged. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, for misconduct (serious offence) after completing 16 years, 3 months, and 15 days of net active service this period. It further shows 7 years, 2 months, and 21 days of prior active service.

4. The administrative separation board proceedings, findings, and recommendations are not available for review.

5. 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:

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 (Serious Offense). The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant's request for retirement on 7 June 2022; however, found the decision to administratively separate the applicant appropriate and determined relief was not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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

Signed by: _____

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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), currently in effect (19 December 2016), This regulation sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. 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. Only the honorable characterization may be awarded a Soldier upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation.

b. Paragraph 12-1. This chapter sets policies and procedures for voluntary retirement of Soldiers because of length of service and governs the retirement of Soldiers (Active Army, ARNGUS, and USAR) who are retiring in their enlisted status.

c. 12-7c. Eligibility. Soldiers who are under suspension of favorable personnel action per AR 600-82 are not precluded from submitting applications for retirement. Requests for retirement will be considered on a case-by-case basis by the local retirement approval authority.

d. Paragraph 14-12. Conditions that subject Soldiers to discharge. Soldiers are subject to action per this section for the following:

e. Paragraph 14-12c. Commission of a serious offense. Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

2. 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/NR) 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.

//NOTHING FOLLOWS//