

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 March 2025

DOCKET NUMBER: AR20240009438

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to general.

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)

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 the time of the incident he was a month away from his expiration term of service (ETS) date. At the same time, he just returned from combat service in Southwest Asia (SWA) from 23 December 1990 to 30 April 1991. His record includes an Army Commendation Medal, Good Conduct Medal and other citations and awards. He feels he served his country with honor. He believes at the time of the second offense he was suffering from the trauma and stress from his time in Kuwait, Iraq, and Saudi Arabia. He notes, although, he never fired his weapon or was fired upon during combat, he did witness death and dismembered enemy soldiers. He also was exposed to open burn pits and burning oil wells. Which he feels has contributed to some of his medical issues.

a. Since leaving the military, he helped raise his daughter to become a successful member of society. He was employed by the same company for about thirty (30) years. He has no criminal record. He considers himself to be a success story because of the discipline the army gave him. He admitted to the mistakes he made and accepted the results. His commanding officer (CO) at the time stated the reason he was handed out the punishment he received was to ensure he could never re-enter the military. Suffice

to say he is past the age of trying to re-enlist so that is not an issue. He feels for the minor offense he was guilty of he has been punished enough. He just would like to be able to use some of the Veteran Administration (VA) benefits, mainly healthcare that he feels he earned after serving his country for three (3) years eleven (11) months with combat duty.

b. He is currently a homeless veteran with some medical issues. He applied for medical benefits and was denied. Then he started getting calls from his local VA clinic in February 2024. He was able to be seen and while there was diagnosed with Type II diabetes and high blood pressure. He was also able to experience appointments with a mental health provider that was very beneficial. He was admitted to a domiciliary to try in get assistance for his addiction. He was committed to participating in the program and getting better mentally and physically. After one week there he was told his discharge type did not allow him to get medical benefits. He would really appreciate any relief to his upgrade possible.

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

- a. He enlisted in the Regular Army on 29 December 1987.
- b. On 23 October 1991 the applicant's company commander recommended a special court-martial empowered to adjudge a Bad Conduct discharge.
- c. On 7 November 1991 court-martial charges were preferred on the applicant for wrongfully use marijuana on or between 16 August 1991 to 16 September 1991.
- d. On 7 November 1991, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation AR 635-200 (Personnel Separations - Enlisted Personnel). He acknowledged:
 - maximum punishment
 - he was guilty of the charges against him or of a lesser included offense
 - he does not desire further rehabilitation or further military service
 - if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
 - he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration,
 - he may be deprived of his rights and benefits as a veteran under both Federal and State law
 - he may expect to encounter substantial prejudice in civilian life

e. Consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge in lieu of trial by courts-martial. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

f. On 14 November 1991, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 3 years, 10 months, and 16 days of active service with no lost time. He was assigned separation code KFS and the narrative reason for separation listed as "For the Good of Service-In Lieu of Court-Martial," with reentry code 3. It also shows he was awarded or authorized:

- Army Commendation Medal
- Good Conduct Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Southwest Asia Service Medal w/2 Bronze Stars
- Marksman Marksmanship Qualification Badge with Rifle Bar, M-16
- Air Assault Badge

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

5. By regulation, an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that 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 noted that the applicant served honorably for nearly four years, including deployment to Southwest Asia from 23 December 1990 to 30 April 1991 in support of combat operations. The Board found in his record no prior misconduct and included multiple awards. Furthermore, the Board

determined the sole offense leading to the applicant' discharge was wrongful use of marijuana, that occurred approximately one month prior to his expiration term of service (ETS) and was his only disciplinary infraction.

2. The Board recognized the applicant's statements regarding the psychological and environmental stressors he experienced during his deployment, including exposure to burn pits and witnessing traumatic events, which may have contributed to his actions. The Board also acknowledged his post-service conduct, including raising a successful daughter, maintaining long-term employment, and living a law-abiding life. While the applicant accepted responsibility for his actions and requested discharge in lieu of trial by court-martial, the Board found the punishment of an under other than honorable conditions discharge to be disproportionately harsh given the isolated nature of the offense, his otherwise exemplary service, and the mitigating circumstances surrounding the incident. The Board determined that the applicant has demonstrated by a preponderance of evidence that an injustice occurred in the characterization of his discharge. Based on this, the Board granted relief to upgrade his discharge to general under honorable conditions.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for 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 General Under Honorable Conditions.

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.

REFERENCES:

1. 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 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

3. 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//