

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 June 2025

DOCKET NUMBER: AR20240011153

APPLICANT REQUESTS: in effect, reconsideration of his previous request to upgrade 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. Incorporated herein by reference are military records, which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20120002005, on 24 July 2012.

2. The applicant states:

- He feels the Army unjustly discharged him
- The separation authority based his under other than honorable conditions character of service on an isolated incident that happened after he had completed more than 13 years of honorable service and put his life on the line in the Gulf War
- He notes that, after 27 years, he is still being punished for what he did

3. The applicant's service record shows the following:

- On 15 November 1983, the applicant enlisted into the Regular Army for 3 years; upon completion of initial entry training, the Army awarded him military occupational specialty 13B (Cannon Crewmember)
- While stationed in Germany, his leadership promoted him to sergeant (SGT)/E-5, effective 1 August 1987
- On 1 December 1988, he immediately reenlisted for 6 years; upon completion of his tour in Germany, orders reassigned him to Fort Sill, and he arrived, on 25 July 1989
- On 18 October 1990, the applicant deployed to Saudi Arabia, in support of Operations Desert Shield/Desert Storm; on 14 March 1991, he redeployed to Fort Sill

- Orders reassigned the applicant to Hawaii; on 16 June 1993, he and his spouse filed a separation agreement
- On 5 May 1994, the applicant immediately reenlisted for 4 years; permanent change of station orders reassigned the applicant to Fort Sill, and he arrived, on 18 January 1995; on 19 January 1996, he and his spouse divorced
- On 18 December 1996, the applicant's command preferred court-martial charges against him for the following Uniform Code of Military Justice (UCMJ) violations:
 - Article 107 (False Official Statements), two specifications – in that the applicant signed two official documents (a Basic Allowance for Quarters (BAQ) request and a falsely dated divorce decree) with the intent to deceive
 - Article 121 (Larceny of Other than Military Property Valued at More Than \$100), two specifications – in that he stole from the U.S. government six months of BAQ, totaling \$3,239.86, and travel entitlements, valued at \$989.12
 - Article 132 (Frauds Against the United States), two specifications – in that he filed a false travel voucher claim for \$989.12, and a false BAQ claim of \$448.50
 - Article 134 (General Article – Altering a Public Record) – in that he altered a public record (his divorce decree) by changing the date of divorce from 19 January 1996 to 19 June 1996
- On 31 January 1997, after consulting with counsel, the applicant requested separation under chapter 10 (Discharge in Lieu of Trial by Court-Martial), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel)
 - The applicant stated he had made his decision of his own free will and no one had coerced him; he additionally acknowledged he was guilty of the charges preferred against him
 - He did not submit statements in his own behalf but instead provided documentation verifying that he had made full restitution
- On 7 February 1997, the separation authority approved the applicant's separation request and directed his under other than honorable conditions discharge; he additionally reduced the applicant from SGT to the lowest enlisted grade (private (PV1)/E-1)
- On 13 March 1997, the Army separated the applicant under other than honorable conditions; his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 13 years, 3 months, and 29 days of net active duty service; the report additionally reflected the following:
 - Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – Army Commendation Medal (4th Award), Army

- Achievement Medal (6th Award), Army Good Conduct Medal (4th Award), National Defense Service Medal
- Item 13 (continued) – Southwest Asia Service Medal with two bronze service stars, Humanitarian Service Medal, "Kuwait Liberation Medal (K)," Noncommissioned Officer Professional Development Ribbon with Numeral "2," Army Service Ribbon, Overseas Service Ribbon with Numeral "2"
- Item 13 (continued) – Air Assault Badge, Driver and Mechanic Badge with Driver-W Component Bar, and Expert Marksmanship Qualification Badge with Rifle and Grenade Bars
- Item 18 (Remarks) – No entries for continuous honorable service or deployment to Saudi Arabia
- Item 25 (Separation Authority) – AR 635-200, chapter 10
- Item 26 (Separation Code) – "KFS"
- Item 27 (Reentry (RE) Code) – RE-3
- Item 28 (Narrative Reason for Separation) – In Lieu of Trial by Court-Martial
- On 28 August 1998, the applicant petitioned the Army Discharge Review Board (ADRB), requesting an upgraded character of service; he argued the Army had inequitably and improperly discharged him based on a single, isolated incident; he had put his life on the line during the Gulf War and had paid the money back
- On 25 November 1998, the ADRB conducted a records review hearing and voted to deny relief
- On 20 December 2011, the applicant applied to the ABCMR for an upgraded discharge; he argued the Army had inequitably and improperly discharged him based on a single, isolated incident; he had put his life on the line during the Gulf War and had paid the money back
- On 24 July 2012, the Board considered the applicant's arguments and service record and denied his request

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation and the lack of any mitigating and/or clemency evidence provided by the applicant for such misconduct, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.
2. The Board, however, did note that the applicant completed a period of honorable service which is not currently annotated on the applicant's DD Form 214 and recommended that change be completed to more accurately reflect the military service of the applicant.

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 statements:

- "Continuous Honorable Service 19901018 TO 19910314" and
- "SERVICE IN SOUTHWEST ASIA FROM 19901018 TO 19910314"

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//

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. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribed policies and procedures for the administrative separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor.

(1) Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate.

(2) Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when the Soldier's subsequent honest and faithful service over a greater period outweighed the disqualifying entries found in his/her

record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 5-3 (Secretarial Plenary Authority). Separation under this paragraph was the Secretary of the Army's prerogative. The separation of any Soldier of the Army under this authority was based on Secretary of the Army determination that separation was in the best interests of the Army.

d. Chapter 10 (Discharge In Lieu of Trial by Court-Martial) applied to Soldiers who had committed an offense or offenses for which the punishment under the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial (MCM) included a punitive (i.e. bad conduct or dishonorable) discharge.

(1) Soldiers could voluntarily request discharge upon the preferral of court-martial charges; commanders were responsible for ensuring such requests were personal decisions, made without coercion, and following access to counsel. The Soldier was to be given a reasonable amount of time to consult with counsel prior to making his/her decision.

(2) The Soldier was required to make his/her request in writing, which certified he/she had been counseled; understood his/her rights; could receive an under other than honorable conditions character of service; and recognized the adverse nature of such a character of service.

2. MCM, in effect at the time, showed a punitive discharge (i.e., bad conduct and/or dishonorable discharge) among the maximum punishments for violations of the following UCMJ Articles:

- Article 107 (False Official Statements)
- Article 121 (Larceny of Other than Military Property Valued at More Than \$100)
- Article 132 (Frauds Against the United States)
- Article 134 (General Article – Altering a Public Record)

3. AR 600-8-19 (Enlisted Promotions and Reductions), in effect at the time, stated in paragraph 6-1e (Reductions), that when a separation authority determined that a Soldier was to be discharged from the service under other than honorable conditions, the Soldier was to be reduced to the lowest enlisted grade. Board action was not required for this reduction.

4. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority; the regulation directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in items 26 (Separation Code) and 28 (Narrative Reason for Separation). For item 27 (Reenlistment Code), the regulation referred preparers to AR 601-210 (Regular Army and Army Reserve Enlistment Program).

5. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with chapter 10, AR 635-200 were to receive an SPD of "KFS" and have the narrative reason for separation: "In Lieu of Trial by Court-Martial" entered on their DD Form 214.

6. AR 601-210 (Regular Army and Army Reserve Enlistment Program), in effect at the time, covered eligibility criteria, policies, and procedures for the Active Army and Army Reserve enlistment program.

a. Paragraph 3-22 (U.S. Army RE Codes) included the following list:

- RE-1 – Soldiers completing their term of active service who were considered qualified to reenter the U.S. Army; they were qualified for enlistment if all other criteria were met
- RE-3 – Soldiers who were not considered fully qualified for reentry or continuous service at time of separation, but their disqualification could be waived

b. Paragraph 4-9 (Waiver and Non-Waiver Disqualifications – Prior Military Service). Prior service applicants who last separated for the good of the service (i.e., in lieu of trial by court-martial) required a waiver to reenter the Regular Army.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs 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.

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 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.

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.

8. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

//NOTHING FOLLOWS//