

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 May 2025

DOCKET NUMBER: AR20240011464

APPLICANT REQUESTS: placement on the retired list in his highest grade held satisfactorily of sergeant first class (SFC)/E7.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for service ending 27 March 2017 published on 14 April 2022

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 Army Discharge Review Board upgraded his character of service from under other than honorable conditions to an honorable in 2022 and he served on active duty for 20-years and 7-months.
3. A review of the applicant's service record shows:
 - On 31 July 1996, he enlisted in the Regular Army and had continuous service through extensions and reenlistments
 - Enlisted Record Brief shows he:
 - Served in Bosnia and Herzegovina during the period of 7 March through 9 August 1999
 - Served in Germany during the period of 4 April 2001 through 12 June 2005
 - Served in Bosnia and Herzegovina during the period of 12 May through 1 September 2002

- Served in Iraq during the period of 12 February 2004 through 14 February 2005
- Served in Iraq during the period of 4 October 2006 through 8 December 2007
- Served in Afghanistan during the period of 1 July 2013 through 16 March 2014
- Advanced or reduced in rank:
 - Private one (PV1) effective 15 March 2017
 - Private two effective 31 January 1997
 - Private first class effective 1 June 1997
 - Specialist effective 1 March 1998
 - Sergeant effective 17 December 1999
 - Staff sergeant (SSG) effective 15 November 2016
 - SFC effective 1 March 2011
- On 28 February 2017, flagged for Drug Abuse Adverse Action adverse action
- On 13 March 2017, flagged for Involuntary Separation/Discharge adverse action
- He was under arrest, confinement or pending military or civilian court action
- He was arraigned by special court-martial convening authority by Special Court-Martial Orders Number 3 dated 11 January 2017 for:
 - Absent without Leave (AWOL) during the period of 3 through 7 March 2016 – guilty
 - AWOL during the period of 15 through 18 March 2016 – guilty
 - Willfully disobeyed a lawful order of a commissioned officer – guilty
 - Failure to register a personally owned firearm – guilty
 - Failure to obey a lawful general regulation by possession of drug paraphernalia on 15 May 2015– dismissed on motion of trial counsel
 - Failure to obey a lawful general regulation by possession of drug paraphernalia on 20 May 2016– dismissed on motion of trial counsel
 - Possession of methamphetamine 15 May 2016 - dismissed on motion of trial counsel
 - Possession of methamphetamine on 20 May 2016 - dismissed on motion of trial counsel
 - Wrongful use of methamphetamine on 13 May 2016 – dismissed on motion of trial counsel
 - Wrongful use of methamphetamine on 16 May 2016 – guilty
 - Unlawfully strike and kick another on the head and legs with fists and feet – dismissed on motion of trial counsel

- Unlawfully strike another on the body with a broom handle – dismissed on motion by counsel
- On 1 November 2016, sentence was adjudged to confinement for 4-months, forfeiture of \$2,514.00 per month for 4-months and reduction in grade to SSG
- Only the sentence as provides for reduction to SSG and forfeiture of \$2,514.00 per month for 4-months was approved and executed
- Adjudged forfeitures of \$2,514.00 per month for 4-months were deferred effective 22 November 2016 with those funds paid to C-W- for support of his dependents and terminated on the date of this orders
- Credited with 149-days of confinement against the confinement sentence

- On 15 March 2017, his request for discharge in lieu of Court-Martial was approved with a character of service of under other than honorable conditions, court-martial charges pending were withdrawn without prejudice effective the date of separation with reduction to the lowest enlisted grade
- On 27 March 2017, he was reassigned to the U.S. Army Transition point for discharge from active duty
- On 27 March 2017, he was discharged from active duty in lieu of Court-Martial and issued an under other than honorable conditions discharge, DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:
 - Items 4a (Grade, Rate or Rank): PV1
 - Item 4b (Pay grade): E-1
 - Item 12c (Net Active Service This Period): 20-years, 7-months, and 20-days
 - Item 12i (Effective Date of Pay Grade): 15 March 2017
 - Item 18 (Remarks):
 - Service in Afghanistan 1 July 2013 through 16 March 2014
 - Service in Iraq 4 October 2006 through 8 December 2007
 - Service in Iraq 12 February 2004 through 14 February 2005
 - Service in Kosovo 12 May through 1 September 2002
 - Service in Kosovo 7 March through 9 August 1999

- On 1 February 2022, the Army Discharge Review Board (ADRB) determined clemency was warranted based on:
 - His length and quality of service, to include combat service
 - Prior period of honorable service to include valor
 - The circumstances surrounding the discharge
 - His post service diagnoses of major depressive disorder, post-traumatic stress disorder and mild traumatic brain injury
 - ADRB granted him relief by upgrading his character of service to honorable

- On 14 April 2022, the Army Review Boards Agency published a new DD Form which changed his character of service to honorable and added in item 18 that his service characterization upgraded per ADRB Docket Number AR20190006292

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 record of service, documents submitted in support of the petition, and executed a comprehensive review based on public law, policy, and regulation. The evidence of record shows the applicant was promoted to the rank/grade of SFC/E-7 on 1 March 2011. The applicant was subsequently arraigned by special court-martial for multiple acts of misconduct. On 15 March 2017, his request for discharge in lieu of trial by court-martial was approved with a characterization of service of under other than honorable conditions. In accordance with the approved request, all pending court-martial charges were withdrawn without prejudice effective the date of separation, and the applicant was reduced to the lowest enlisted grade. He was discharged under the applicable regulatory authority in the rank/grade of Private (PV1)/E-1.

On 1 February 2022, the ADRB determined that clemency was warranted based on the applicant's length of service, his prior period of honorable service, the circumstances surrounding his discharge, and post-service diagnoses of major depressive disorder, post-traumatic stress disorder, and mild traumatic brain injury. The ADRB upgraded his character of service to honorable.

The Board noted, however, that although the ADRB upgraded the applicant's character of service, the underlying facts and circumstances of his discharge remained unchanged. Army Regulation 600-8-19, in effect at the time directs when the separation authority determines a Soldier is to be discharged from the Service under other than honorable conditions, he or she will be reduced to the lowest enlisted grade. Board action is not required for this reduction. As such, the Board determined there was no error or injustice in the applicant's reduction to E-1 and denied the requested relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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.

//SIGNED//
X

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

a. Chapter 10 (In lieu of Court-martial), provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

b. Chapter 12 (Retirement for Length of Service), 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. Paragraph 12-3 Soldiers of the Regular Army must be on active duty when they retire. The Army Grade Determination Review Board in accordance with AR 15–80 will make determination of the highest grade served in satisfactorily.

d. Paragraph 12-4 (Twenty-year retirement law) a Soldier who has completed 20 but less than 30 years of AFS in the U.S. Armed Forces may be retired at his or her request. The Soldier must have completed all required service obligations at the time of retirement.

e. Paragraph 12-14 , all requests for retirement of eligible Soldiers with less than 30 years of service are considered on their individual merits. Such requests normally should be approved. Requests, however, may be disapproved, or the required date of retirement delayed, based on the best interest of the Army.

3. AR 15-80 (Army Grade Determination Review Board and Grade Determinations), established policies, procedures and responsibilities of the Army Grade Determination Review Board and of the organization delegated authority to make grade determination on behalf of the Secretary of the Army.

a. Paragraph 2-3, automatic grade determination do not include cases where; reversion to a lower grade was expressly for prejudice or cause, owing to misconduct, or punishment pursuant to Article 15, Uniform Code of Military Justice or court-martial.

b. Paragraph 2-4 (Grade Determination considerations), a grade determination is an administrative decision appropriate retirement grade, retirement pay or other separation pay. The AGDRB will consider each case on its own merits. Generally, determination will be based on the Soldier's overall service in the grade in question, either on active duty or other service qualifying the Soldier for retirement, receipt of retired pay, or separation for physical disability. Circumstances pertinent to whether such service is found satisfactory include but not limited to the following:

- Medical reasons, which may have been a contributing or decisive factor in a reduction in grade, misconduct or substandard performance
- Compassionate reasons
- Length or otherwise satisfactory service in the grade in question before and after the misconduct.

c. Paragraph 2-5 (Unsatisfactory Service) service in the highest grade or an intermediate grade normally will be considered to have been unsatisfactory when reversion to the lower grade was owing to misconduct or the result of a court-martial.

d. Paragraph 2-6 (Service in the lower grade) If service in the highest grade held was unsatisfactory, the Soldier can be deemed to have served satisfactorily in the next lower grade actually held, unless paragraph 2-5 applies with regard to that next lower grade.

e. Paragraph 3-1 Enlisted Soldiers will usually retire in the grade held on the day before their placement on the retired list. While enlisted Soldiers may be reduced in grade by court-martials, non-judicial punishment proceedings administrative separations proceeding or inefficiency boards, enlisted grade determinations cannot result in reduction of an enlisted Soldier's or retiree's current grade. Enlisted grade determinations still result in either a decision to retain the individual's current grade or to advance to a higher grade in which the individual satisfactorily serve or to when advancement is otherwise provided by law.

//NOTHING FOLLOWS//