

IN THE CASE OF: ██████████

BOARD DATE: 8 February 2024

DOCKET NUMBER: AR20230003586

ON BEHALF OF APPLICANT, COUNSEL REQUESTS:

- an upgrade of his general under honorable conditions discharge to honorable
- change the narrative reason for separation to “Secretarial Authority”

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

- DD Form 149 (Application for Correction of Military Record)
- Legal brief, with Exhibits A through N

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. Counsel states, in effect:

a. Applicant was performing his duties with exemplary remarks and had been since entering the United States Army. The applicant admits he used illicit drugs while he was a PFC and was aware that this is a violation of the Army's zero-tolerance policy. He is remorseful for his participation in illegal drug use. He now realizes that his actions were immature and irresponsible. Although the applicant's single act of indiscretion was found to violate UCMJ regulations, this single offense should not be enough to prevent him from obtaining a general, under honorable conditions discharge. If given the opportunity, he would have corrected his mistake and continued to serve honorably.

b. The applicant's discharge took place over 16 years ago. It is unjust to continue to characterize and punish him with his general under honorable conditions discharge. He has received full punishment from both society and the U.S Army, through his separation. He has repaid his debts to society by fulfilling the terms of the nonjudicial punishment for his infraction. To this day, the applicant is still living with the consequences of his mistake.

c. The applicant has demonstrated his ability to overcome his mistakes and move forward in a positive light and takes full responsibility for his actions, as this single incident does not illustrate the caliber of Soldier or man he has become. Since his discharge, the applicant wants to continue his career to attain his life goals and knowledge. He has no criminal record, no involvement in drugs or alcohol. The applicant and his wife started a non-profit organization; You are not alone Vets and is focused on helping other veterans.

3. Counsel submits the following exhibits:

a. Exhibit A: DD Form 214 (Certificate of Release or Discharge), reflects he was discharged on 2 August 2006, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c, misconduct (serious offense), with a characterization of service of general under honorable conditions (separation code JKQ, reentry code 3). He completed 1 year, 11 months, and 15 days of net active service this period, with no lost time. He was awarded or authorized a National Defense Service Medal, Iraq Campaign Medal, Global War on Terrorism Medal, Army Service Ribbon, Overseas Service Ribbon, and Armed Forces Reserve Medal w/M Device.

b. Exhibit B: DD Form 149, dated 18 November 2022.

c. Exhibit C: Statement of Intent, dated 1 December 2022, reflects the applicant declared he will never misuse substances in the future, which shall include the use or possession of any illegal drug, or the use of a legal prescription drug without a valid prescription or in a manner inconsistent with their intended purpose.

d. Exhibit D: [REDACTED] Vets business page (4 pages)

e. Exhibit E: [REDACTED] article, [REDACTED]

f. Exhibit F: Medical-related documents (16 pages)

g. Exhibit G: Four (4) Letters of Recommendation from the following personnel:

1) Sergeant Major (Retired) [REDACTED] writes, "I met the applicant when I served as first sergeant in the Wounded Warrior Unit at Fort Dix. He was stationed in the Unit for treatment of PTSD when he returned from Iraq in 2005. During his time in the Unit, the applicant diligently complied with his treatment regimen. Additionally, he took it upon himself to arrange a Christmas trip to [REDACTED] to bring gifts and a party to underprivileged children. He went out of his way to be of beneficial presence to his fellow soldiers. After leaving the Army, the applicant started a nonprofit, You Are Not Alone, to aid homeless veterans in finding housing. During this time, I was the executive

director of Tip of the Arrow Foundation. The applicant worked with us to assist Veterans transitioning to civilian employments. This included identifying employers, providing resume and interview assistance, putting on job fairs and visiting Wounded Warrior Units around the country. More than 1,000 Veterans were employed. The applicant has been tireless in helping others. His enthusiasm and dedication are impressive, particularly given the issues he has personally dealt with.”

2) Ms. [REDACTED] writes, “At the beginning of the year of 2020, I met the applicant while working front desk for [REDACTED] hotel. At which time I, a single mother of two living in [REDACTED] without family or friends was in a lot of financial distress. While at work one afternoon the applicant came to the front desk to check in with me. He was very polite and professional, sharing that he has founded an organization which helps war veterans. A few hours before my shift was over, I saw him standing in the lobby so I took the opportunity to confide in the applicant about my hardship. To my surprise and without hesitation he offered to help me. I was going through an eviction then the applicant provided emergency shelter for me and my two children. I found myself unable to afford rent, food or clothes for me and my children on my own salary, he assisted us with everything. The applicant has not only helped me with finances but also my career. As an independent [REDACTED] Consultant, he encouraged me to start my own business. The applicant has been a blessing in my life, and I've witnessed him go out his way to help many others. As an Army war veteran, he dedicates his life to helping his fellow veterans by taking homeless veterans off the streets and providing shelter, food and overall wrap around services.”

3) Sergeant (SGT) [REDACTED] writes, “The applicant has been a member of the unit for the past twenty six years. His outstanding service to the unit in the state of [REDACTED] and to this Nation speaks for itself. He goes above and beyond the call of duty whenever faced with challenges at the unit. From my past experiences with the applicant he helps with communication, picking up supplies, in charge of weapons and advance parties. Also, he has encouraged me and other members through hard times. The applicant regularly displays his true dedication for giving back to the community, his goal is to support all homeless veterans. I worked with the applicant on many occasions, where I've witnessed him feed 2,000 people in the state [REDACTED]. He's also feed homeless vets in [REDACTED] and [REDACTED] all through his Nonprofit organization, [REDACTED] Foundation Inc. His nonprofit has assisted many veterans with housing, appliances, rehab, clothing, and food. My wish is you will see past any prior errors and see the genuine dedication he offers in support of our military veterans.”

4) SGT (Retired) [REDACTED] writes, “The applicant served with myself in the 69th Infantry with honor and dignity. I did not serve with him for all of his enlistment time, but the times that I did serve with him he was an outstanding Soldier who carried out the duties and responsibilities that was assigned to him. It never came to my attention of

any mishaps or wrongdoings during the time of his enlistment. For me, he has always been an outstanding Soldier. I cannot bear witness to whatever the problems he may be facing now, but I can only say that for the time that I served with the applicant, he was an outstanding Soldier.”

- h. Exhibit H: Home Project for Vets (4 pages)
- i. Exhibit I: Four Certificates of Completion and Appreciation, Masonic certificate
- j. Exhibit J: Medical Evaluation (4 pages)
- k. Exhibit K: [REDACTED] Treatment Center (2 pages)
- l. Exhibit L: Family homes
- m. Exhibit M: Met Life Stadium 2014 Non-Profit Organization (13 pages)
- n. Exhibit N: Family photographs (3 pages)

4. A review of the applicant’s service record shows:

a. He enlisted in the Army National Guard of the United States on 20 December 1984.

b. Office of the Adjutant General, State [REDACTED] orders 226-161, dated 13 August 2004, reflects the applicant was ordered to active duty in support of Operation Iraqi Freedom, with a report date of 18 August 2004, for a period not to exceed 560 days.

c. U.S. Army Human Resources Command orders A-10-521830, dated 20 October 2005, reflects the applicant was retained on active duty and assigned to Medical Retention CE Fort Dix, NJ, with a reporting date of 18 October 2005, to voluntarily participate in Reserve Component medical holdover medical retention processing for completion of medical care and treatment.

d. The complete facts and circumstances, in its entirety, surrounding his separation are not available for review. However, as stated in paragraph 3a, his DD Form 214 reflects he was discharged on 2 August 2006, under the provisions of AR 635-200, paragraph 14-12c, misconduct (serious offense), with a characterization of service of general under honorable conditions.

e. NGB Form 22 (National Guard Bureau – Report of Separation and Record of Service) reflects he was honorably discharged from the Army National Guard [REDACTED]

██████ 2 November 2006, under the provisions of National Guard Regulation 600-200, paragraph 8-27(u). He served 21 years, 10 months, and 13 days of net service this period.

f. Joint Force Headquarters orders 163-1028, dated 12 June 2007, reflects he was honorably discharged from the Army National Guard and assigned to the Retired Reserve, with an effective date of 2 November 2006.

5. On 4 April 2011, the Army Discharge Review Board (ADRB) carefully examined the applicant's record of service during the period of enlistment under review, hearing his testimony, and considering the analyst's recommendation and rationale, the Board determined that the discharge was both proper and equitably and voted to deny relief.

6. AR 635-200 states, action will be taken to separate a member for misconduct such as commission of a serious offense. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

7. 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:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and although the applicant provided evidence of post-service achievements and letters of reference, the Board found those insufficient to overcome his admitted illegal drug use, further noting that he was ultimately retained by the Army National Guard through his honorable discharge in 2007 and transferred to the Retired Reserve. Based on a preponderance of the evidence, the Board determined the under honorable conditions (general) character of service the applicant received upon separation from active duty in 2006 was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

6/4/2024

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 (Personnel Separations - Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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 provides that 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.

c. Chapter 14, of the version in effect at the time, established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. It provided that action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally appropriate for a Soldier discharged under this chapter. However, the separation authority could direct an honorable discharge if merited by the Soldier's overall record.

3. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

4. 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. 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. 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//