

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 May 2024

DOCKET NUMBER: AR20230003733

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

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

- DD Form 149 (Application for Correction of Military Record)
- 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, in effect, he believes the reason for his discharge was unjust. He only had one Article 15 during the time he was in service, which does not show he a pattern of misconduct. The incident that led to the Article 15 was when they were told to secure their weapons in the safe position. They were checked prior to getting into the helicopter by the platoon sergeant. After getting out of the helicopter, they were marching, and he fell down a hill. Upon getting back to the top, his weapon discharged. He was cited for disobeying an order.
3. The applicant provides a copy of his DD Form 214, which reflects he was discharged on 31 January 1992, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, pattern of misconduct, general under honorable conditions, separation code JKM, reentry code RE-3. He served 1 year, 7 months, and 6 days net active service this period.
4. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 26 June 1990 for three (3) years and 14 weeks.

b. He accepted nonjudicial punishment (NJP) on two occasions as follows:

- on 26 March 1991, for having received a lawful order from a noncommissioned officer to check the safety lever on his weapon, an order which it was his duty to obey, on or about 12 March 1991, willfully disobeyed the same
- on 1 October 1991, for on or about 19 September 1991, without authority, go from his appointed place of duty to wit: Co B, Inf Regt weapons guard, he was reduced to the grade private2/E-2

c. DA Form 3822-R (Report of Mental Status Evaluation), dated 16 October 1991, reflects the applicant was evaluated and was cleared for any administrative action deemed appropriate by the command.

d. On 16 January 1992, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), paragraph 14-12b, for pattern of misconduct.

e. The applicant acknowledged receipt of the commander's intent to separate him. He waived consulting legal counsel and representation by military counsel and civilian counsel at no expense to the Government. He was advised of the importance of consulting with legal counsel, and the consequences of waiving that right. He acknowledged he:

- understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him
- understood he could be ineligible for many or all benefits as a veteran under Federal and State laws as a result of the issuance of a discharge under other than honorable conditions
- understood if he received a discharge characterization of less than honorable, he could make an application to the Army Discharge Review Board (ADRB) or the ABCMR for an upgrade, but he understood that an act of consideration by either board did not imply his discharge would be upgraded

f. Subsequent to this acknowledgement and consultation with counsel, his immediate commander-initiated separation action against him due to a pattern of misconduct, in accordance with AR 635-200, chapter 14-12b. His chain of command recommended approval.

g. On 21 January 1992, the separation authority approved the applicant's discharge under the provisions of AR 635-200, paragraph 14-12b, pattern of misconduct, with his

service characterized as general under honorable conditions. The applicant was discharged accordingly on 31 January 1992.

h. The applicant was discharged on 31 January 1992, under the provisions of AR 635-200, paragraph 14-12b, pattern of misconduct, general under honorable conditions, separation code JKM, reentry code RE-3.

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

6. Army Regulation 635-200 (Personnel Separations Enlisted Personnel) provides action will be taken to separate a member for a pattern of misconduct. 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:

1. 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 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 found insufficient evidence of in-service mitigating factors to overcome the misconduct. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination.

2. The Board found the applicant's service record exhibits various instances of misconduct during his enlistment period for 1 year, 7 months, and 6 days net active service this period. The applicant was discharged for misconduct and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. The Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief. Therefore, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.



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, USC, section 1552(b), provides that applications for correction of military records must be filed within three years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the three-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 states 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 states 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. 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//