

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 November 2023

DOCKET NUMBER: AR20230004260

APPLICANT REQUESTS: Upgrade of his under honorable conditions (general) discharge.

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

DD Form 149 (Application for Correction of Military Record)

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 he wants a DD Form 214 (Certificate of Release or Discharge from Active Duty) that says honorable. Section 28 (Narrative Reason for Separation) states "Misconduct," and the only thing he can think of was when his wife was having an affair while he was out in the field, and he was reasonably upset. He had not had any other issues in his four years. It has haunted him not to have an honorable certificate on his wall.
3. On 18 February 1986, the applicant enlisted in the Regular Army. Upon completion of training, he was awarded military occupational specialty 11B (Infantryman). He reenlisted on 18 October 1988. The highest grade he attained was E-4.
4. The applicant received formal counseling on the following dates/for:
  - 11 December 1989, writing a check without sufficient funds
  - 7 March 1990, failing to make formation on-time
  - 1 May 1990, writing checks while having insufficient funds
  - 27 May 1990, violating a civil restraining order
  - 15 June 1990, leaving his appointed place of duty

5. A Fort Carson, CO, Family Advocacy Case Management Team (FACMT) letter, dated 23 July 1990, shows an investigation confirmed spouse physical abuse by the applicant. He was assigned a FACMT case manager and scheduled for treatment and follow-up.
6. The applicant received additional counseling on the following dates/for:
  - 20 July 1990, writing checks without sufficient funds and missing formation
  - 30 July 1990, receiving a letter of indebtedness from civilian rental company and writing checks without sufficient funds
  - 8 August 1990, monthly counseling on his personal and financial problems affecting his job performance
7. On 8 August 1990, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
8. The applicant's commander notified him on 30 August 1990, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, for a pattern of misconduct. As the specific reasons, his commander cited the applicant's numerous failures to report and several bad checks.
9. The applicant's commander formally recommended his separation prior to expiration of his term of service under the provisions of Army Regulation 635-200, paragraph 14-12b, for misconduct.
10. On 4 September 1990, the applicant acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him. He declined to submit a statement in his own behalf.
11. Consistent with the chain of command's recommendation, the separation authority approved the recommended discharge on 10 September 1990, with an under honorable conditions (general) discharge.
12. The applicant was discharged on 18 September 1990. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12b, for a pattern of misconduct. His service was characterized as under honorable conditions (general). He completed 4 years, 7 months, and 1 day of net active service this period.

13. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency 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 the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust. The Board concurs with the correction described in Administrative Note(s) below.

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:

Other than the correction addressed in Administrative Note(s) below, the Board determined 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 otherwise insufficient as a basis for correction of the records of the individual concerned.

2/16/2024

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.

ADMINISTRATIVE NOTE:

A review of the applicant's record shows his DD Form 214, for the period ending 18 September 1990, is missing a required entry. As a result, amend the DD Form 214 by adding to item 18 (Remarks): "SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE."

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 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
  - a. 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. 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, paragraph 14-12b provides for the separation of Soldiers when they have a pattern of misconduct involving acts of discreditable involvement with civil or military authorities and conduct which is prejudicial to good order and discipline. The issuance of a discharge under other than honorable conditions is normally considered appropriate for separations under the provisions of Chapter 14.

(1) The separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(2) Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate. A characterization of honorable may be approved only by the commander exercising general court-martial jurisdiction, or higher authority, unless authority is delegated.

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/NR) 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.

//NOTHING FOLLOWS//