

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 March 2024

DOCKET NUMBER: AR20230004394

APPLICANT REQUESTS: His under honorable conditions (general) discharge be upgraded to an honorable 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 needs his discharge upgraded to be eligible for admittance to [REDACTED] State Veterans Home.
3. A review of the applicant's service record shows he entered active duty on 4 December 1979 and was honorably released from active duty and transferred to the U.S. Army Reserve on 3 December 1982.
4. The applicant reenlisted in the Regular Army for 3 years on 23 November 1983 . He had immediate reenlistments on 28 March 1986 and 18 August 1992. The applicant served in the military occupational specialties 12F (Combat Engineer Track Vehicle Crewman) for 12 years and 18C (Special Forces Engineer Sergeant) for 3 years. The highest grade he held was E-6.
5. The available record shows the applicant was cited by civilian authorities for driving under the influence (DUI) on 25 March 1994.
6. On 21 April 1994, he received a Memorandum of Reprimand (MOR) which he appealed on 11 May 1994. The appeal was denied and the MOR was directed to be placed in his permanent file.

7. The applicant's immediate commander notified the applicant, on 12 June 1994, of his intent to initiate actions to separate him under Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, paragraph 14- 12c for misconduct – commission of a serious offense. His commander indicated the specific reasons as four alcohol related incidents, 9 July 1988, 7 May 1989, 2 September 1993 and 24 March 1994, all being DUIs. The available records do not include documentation of the first three alcohol related incidents.

8 The applicant consulted with legal counsel on 26 July 1994. He was advised of the basis for the contemplated discharge, the possible effects of an under honorable conditions discharge, and the procedures and rights that were available to him. He elected to submit a statement in his own behalf. In his statement the applicant noted:

a. A civil court found him not guilty of the first DUI and it was inappropriate to use this offense for a crime he did not commit.

b. He had received nonjudicial punishment and been reduced in grade following the second DUI but had recovered and regained his rank.

c. The third offense was for public intoxication not a DUI.

d. The fourth offense was pending court action and he had already received a MOR for this offense.

9. A DA Form 3822-R (Report of Mental Status Evaluation), dated 27 July 1994, shows the applicant had no abnormalities in behavior, level of orientation, mood, thinking process, thought content, or memory. He was determined to be mentally capable to understand and participate in the proceedings deemed appropriate by command.

10. On 29 July 1994, the applicant's immediate commander formally recommended his separation from service under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c. He recommended the applicant receive a general discharge.

11. The civilian court dismissed the DUI charge on 10 October 1994.

12. The applicant was afforded a board hearing on 11 October 1994 to determine if the applicant should be eliminated under Army Regulation 635-200, chapter 14. The determination was he had committed conduct prejudicial to good order and discipline by the commission of a civil offense and recommended he be discharged with a general discharge.

13. The Staff Judge Advocate (SJA) reviewed the separation packet on 6 December 1994 noting:

a. The administrative board held on 11 October 1994 recommended the applicant be separated with a general discharge but the discharge be suspended for 6 months.

b. The SJA concurred with the Defense Counsel that several errors had been made in the actions of the board. Specifically, that it improperly considered evidence of a DUI acquittal, the board made a finding that a pattern of misconduct had occurred in addition to serious misconduct. Finding that a pattern of misconduct occurred was erroneous because the applicant was not properly notified that this was a basis for separation.

14. The available record does not contain a copy of the separation authority's approved discharge recommendation.

15. The applicant was discharged on 20 December 1994 in the pay grade of E-6. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c, for misconduct and his service characterization was under honorable conditions. He was credited with 14 years and 28 days of net active service and 1 year, 2 months, and 4 days of inactive service. He was awarded the following awards and decorations:

- Army Commendation Medal (2nd award)
- Army Achievement Medal (2nd award)
- Army Good Conduct Medal (4th award)
- Humanitarian Service Medal
- National Defense Service Medal
- Army Service Ribbon
- Noncommissioned Officers Development Ribbon with Numeral 3
- Overseas Service Ribbon (2)
- Parachutist Badge
- Expert Qualification Badge with Pistol Bar
- Sharpshooter Qualification Badge with Rifle and Hand Grenade Bars
- Driver and Mechanic Badge
- Special Forces Tab
- Arab Emirates Parachutist Badge
- Army Lapel Button

16. In determining whether to grant relief the Boards for Correction of Military/Naval Records (BCM/NR) 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, 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 the Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

7/24/2024
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CHAIRPERSON
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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(S): The applicant's DD Form 214 for the period ending 20 December 1994 is missing an administrative entry. Please correct the DD Form 214 by adding the following statement to item 18 (Remarks): "Continuous honorable active service from 19881123-19920818."

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.
3. 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 Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.
 - d. Paragraph 14-12c (Commission of a Serious Offense) applied to Soldiers who committed a serious military or civilian offense, when required by the specific circumstances warrant separation and a punitive discharge was, or could be authorized for that same or relatively similar offense under the UCMJ.

4. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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//