

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 December 2023

DOCKET NUMBER: AR20230005024

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

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

- DD Form 149 (Application for Correction of Military Record)
- Headquarters, 63d Regional Support Command orders 11-083-00032

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 his discharge should be upgraded to honorable because he sought out treatment for marijuana addiction and completed the mental health evaluation. It has been nine (9) years since then and he has maintained sobriety this entire time.
3. The applicant provides a copy of his U.S. Army Reserve discharge orders.
4. A review of the applicant's service record shows:
 - a. He enlisted in the Army Reserve on 16 September 2008.
 - b. The complete facts and circumstances surrounding his separation are not available for review. However, the applicant provided a copy his discharge orders 11-083-00032, issued by Headquarters, 63d Regional Support Command, dated 24 March 2011, which reflects his effective date of discharge was 31 March 2011, with a character of service of general under honorable conditions. The authority is Army Regulation (AR) 135-178 (Army National Guard and Army Reserve Enlisted Administrative Separations)

5. The applicant applied to the ADRB for an upgrade of his discharge on 13 July 2012. After careful review of his application, military records and all other available evidence, the Army Discharge Review Board determined that the applicant was properly and equitably discharged. Accordingly, his request for a change in the character and/or reason of his discharge was denied.

6. Army Regulation 135-178 provides for the separation of enlisted personnel of the U.S. Army Reserve and Army National Guard. It states the honorable characterization of service is appropriate when the quality of the Soldier's service generally meets the standards of acceptable conduct and performance of duty for military personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate. A general discharge is warranted when significant negative aspects of the Soldier's conduct or performance outweigh positive aspects of the Soldier's military record.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant enlisted in the USAR on 16 September 2008, and he was separated on 31 March 2011. The complete facts and circumstances surrounding his separation are not available for review. However, discharge orders 11-083-00032, issued by Headquarters, 63d Regional Support Command, on 24 March 2011, ordered his discharge by authority of AR 135-178 with a character of service of general under honorable conditions. 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. In the absence of the separation packet, the Board presumed administrative regularity in the discharge process and concluded that based on the discharge orders, the characterization of service was both proper and equitable.

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.

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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.

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 135-178 provides for the separation of enlisted personnel of the U.S. Army Reserve and Army National Guard. It states the honorable characterization of service is appropriate when the quality of the Soldier's service generally meets the standards of acceptable conduct and performance of duty for military personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate.

A general discharge is warranted when significant negative aspects of the Soldier's conduct or performance outweigh positive aspects of the Soldier's military 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//