

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 March 2024

DOCKET NUMBER: AR20230005596

APPLICANT REQUESTS: reconsideration of his previous requests for upgrade of his under honorable conditions (general) discharge to an honorable discharge, and to appear in person before the Board.

APPLICANT'S SUPPORTING DOCUMENT CONSIDERED BY THE BOARD:

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20130004201 on 2 December 2013; and in Docket Number AR20180001262 on 16 April 2019.
2. As a new argument, the applicant states there was insufficient evidence to warrant his discharge.
3. The applicant enlisted in the Regular Army on 24 July 2001 for a period of 3 years. He was promoted to the rank/grade of specialist/E-4 on 24 May 2004, the highest grade held.
4. On 29 April 2004, the applicant was referred to the Army Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) by his commander following an incident wherein he passed out and urinated on himself.
5. The applicant was counseled on the dates shown for the following reasons. He was advised that continued behavior of this nature could result in disciplinary action and/or initiation of action to have him administratively separated.
 - 7 October 2004 – failure to report for morning accountability formation
 - 4 November 2004 – failure to report for morning accountability formation; being drunk on duty; failure to report to work; and being disrespectful to a noncommissioned officer (NCO)

6. On 8 November 2004, an administrative flag was imposed against the applicant to prevent him from receiving any favorable personnel actions while he was pending adverse action.
7. On 18 November 2004, the applicant underwent a separation medical examination and was determined to be qualified for service and/or administrative separation actions.
8. On 20 December 2004, the applicant's First Sergeant informed him that he was being command referred for a mental evaluation due to his pending separation under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, for alcohol abuse and a pattern of misconduct.
9. On 22 December 2004, the applicant underwent a mental status evaluation, wherein it was determined that he had no duty limitations due to behavioral health reasons and met medical retention standards. He was mentally responsible and could understand and participate in administrative proceedings and appreciated the difference between right and wrong. He was cleared for administrative actions. It was also noted that the applicant appeared well motivated to remain in the Army and had agreed to continued ADAPCP treatment.
10. On 10 January 2005, the applicant's immediate commander notified the applicant of his intent to initiate actions to separate him under the provisions of Army Regulation 635-200, paragraph 14-12c, for his numerous occasions of failing to report to his place of duty, disrespecting an NCO, and reporting to work under the influence of alcohol. He was advised that he was being recommended for a general, under honorable conditions discharge, but the final determination of his characterization of service would be made by the separation authority. The applicant acknowledged receipt of the proposed separation notification on the same day.
11. On 12 January 2005, the applicant acknowledged that he was advised of the reasons for separation and of the rights available to him. He consulted with counsel and submitted a conditional election of rights wherein he elected not to submit statements in his own behalf.
12. On 26 January 2005, the applicant's immediate commander formally recommended his separation prior to the expiration of his term of service. The interim commander concurred with the recommendation.
13. On 31 January 2005, the separation authority approved the recommendation for separation, and directed the applicant be issued a general, under honorable conditions discharge.

14. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged in the grade of E-4 on 11 February 2005, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of misconduct, with separation code "JKQ" and reentry code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 3 years, 6 months, and 18 days of net active service this period. He did not complete his first full term of service.

15. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his discharge. On 26 January 2012, the applicant was informed that after careful review of his application, military records, and all other available evidence, the ADRB determined that he was properly and equitably discharged and denied his request.

16. The applicant petitioned the ABCMR for relief. On 6 December 2013, the applicant was informed that after considering his application under procedures established by the Secretary of the Army, the ABCMR had denied his request.

17. The applicant petitioned the ABCMR for reconsideration of his request. On or about 10 May 2019, the applicant was informed the ABCMR had denied his request.

18. 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. Applicants do not have a right to a hearing before the ABCMR.

BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.

2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

3. The Board notes this is the applicant's 3rd or 4th reconsideration request for an upgrade of his characterization of service to honorable, and though he provides a new argument, the Board did not find his argument sufficient to overcome the indiscipline in his record, which includes a history of failure to report, being drunk on duty, and

disrespect towards noncommissioned officers. The Board determined the evidence in the record supports the conclusion the applicant was properly and equitably discharged.

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, U.S. Code, 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 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 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 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 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

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/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//