

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 December 2023

DOCKET NUMBER: AR20230005848

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) characterization of service and an appearance before the Board via video or telephone.

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 (USC), 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, at the time of his discharge, he was very young, and he made some financial mistakes. He believes he was punished strongly due to the reduction of troops that occurred in the 1990s. The same incidents happen today and go unpunished. He is a Department of Defense employee with an impeccable record, and he maintains a secret security clearance. He realizes his wrongdoing, but he rectified the situation by repaying all his bills in full.
3. The applicant enlisted in the Regular Army on 10 October 1990 for a 2-year period. The highest rank he attained was private/E-2.
4. The applicant was formally counseled on thirteen occasions between 15 April and 23 July 1991. Areas of emphasis covered in the counseling include, but are not limited to:
 - disobeying an order given by a noncommissioned officer
 - departing from his place of duty without permission
 - numerous occasions of issuing dishonored checks
5. The applicant accepted non-judicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 22 November 1991 for wrongfully and unlawfully

uttering checks with the intent to defraud and for the procurement of lawful currency and things of value, on diverse occasions, to Fort Leonard Wood Credit Union between on or about 11 April 1991 to 30 April 1991, to the Community, Morale, Welfare, Recreation Fund between on or about 14 April 1991 to 12 May 1991, and to the Stars and Stripes Fund between on or about 6 April 1991 to 27 June 1991. His punishment consisted of reduction to private/E-1, forfeiture of \$300.00 pay per month for two months, 45 days of extra duty, and 45 days of restriction.

6. A Standard Form (SF) 93 (Report of Medical History), dated 6 December 1991, and the corresponding SF 88 (Report of Medical Examination) shows the applicant reported he was in good health. He required a follow up examination by orthopedics for a symptomatic bone spur on his right ankle prior to being medically qualified for separation.

7. A DA Form 3822-R (Report of Mental Status Evaluation), dated 6 December 1991, shows the applicant was psychiatrically cleared to participate in board proceedings deemed necessary by command.

8. The applicant's immediate commander notified the applicant of his intent to initiate separation action against him on 18 December 1991, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, by reason of patterns of misconduct and commission of a serious offense. As the specific reason his commander cited the applicant's Article 15 for intent to defraud, reduction to private/E-1, and dishonored checks in the amounts of \$422.10, \$240.00, and \$208.25.

9. On that same date, the applicant acknowledged receipt of the proposed separation notification memorandum and consulted with counsel. He was advised of the basis for the contemplated separation action against him, the rights available to him, and the effect of any action taken by him to waive those rights. He was advised he could submit statements in his own behalf. He elected not to submit a statement.

10. The applicant's immediate commander formally recommended his separation from service under the provisions of Army Regulation 635-200, paragraph 14-12b, c, for patterns of misconduct and commission of a serious offense. The intermediate commander reviewed and concurred with the recommendation, further recommending the issuance of an under honorable conditions (general) characterization of service.

11. The separation authority approved the recommended action, on 27 December 1991, and directed the issuance of a General Discharge Certificate.

12. Accordingly, the applicant was discharged on 9 January 1992 under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct – commission of a serious offense. His DD Form 214 (Certificate of Release or Discharge from Active Duty)

confirms his service was characterized as under honorable conditions (general), with separation code JKQ and reentry code 3. He was credited with 1 year and 3 months of net active service.

13. Regulatory guidance provides when an individual is discharged under the provisions of Army Regulation 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. 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.

14. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The Board determined the evidence of record 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.

2. 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 was discharged from active duty due to misconduct – commission of a serious offense with a general discharge, following completion of 1 year and 3 months of net active service. The applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : 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, USC, 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 (Army Board for Correction of Military Records), paragraph 2-11 states applicants do not have the right to a hearing before the ABCMR. The Director of 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. The version in effect at the time provided that:
 - 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 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, conviction by civil authorities, desertion, or absences without leave. 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 (UOTHC) was normally considered appropriate. However, the separation authority could direct a general discharge if such was 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, 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//