

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 December 2023

DOCKET NUMBER: AR20230006087

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

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

- DD Form 149 (Application for Correction of Military Record), 11 January 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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, since his discharge in 2006, to present day and having served during war time that he should be considered a fully honorable veteran. He is also in need of medical benefits and attention.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 1 September 2004.
 - b. On 16 March 2006, he accepted non-judicial punishment for the wrongful use of amphetamines, dextromethamphetamines, and methamphetamines-controlled substances. He received the following:
 - reduced to the grade of E-1
 - forfeiture of \$636.00 pay for two months
 - 45 days extra duty
 - restricted to the limits of the barracks, place of duty, dining facility, place of worship and medical/dental facilities
 - c. On 8 May 2006, the applicant's immediate commander notified the applicant of

his intent to initiate separation action against him under the provisions of paragraph 14-12c of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) for Commission of a Serious Offense. The reasons for the proposed actions were, that he received a Field Grade Article 15 on 16 March 2006, he wrongfully used amphetamines, dextromethamphetamines, and methamphetamines, a controlled substance. The applicant acknowledged receipt of the commander's intent to separate him.

d. On 10 May 2006, he consulted with legal counsel who advised him of the basis for the contemplated separation action for Commission of a Serious Offense, the type of discharge he could receive and its effect on further enlistment or reenlistment, the possible effects of this discharge, and of the procedures/rights available to him. He elected not to submit a statement in his own behalf. He acknowledged he:

- understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him
- understood he could be ineligible for many or all benefits as a veteran under both Federal and State laws as a result of the issuance of a discharge under other than honorable conditions
- understood if he received a discharge characterization of less than honorable, he could make an application to the Army Discharge Review Board (ADRB) or the ABCMR for an upgrade, but he understood that an act of consideration by either board did not imply his discharge would be upgraded
- understood that he could, up until the date the separation authority orders, direct, or approves his separation, withdraw and request that an administrative separation board heard his case

e. On 17 May 2016, consistent with the chain of command recommendations, the separation authority approved the applicant's discharge under the provisions of AR 635-200, Chapter 14, Paragraph 14-12c, (Commission of a Serious Offense). A General Under Honorable Conditions Certificate would be issued.

f. The applicant was discharged on 1 June 2006, under the provisions of AR 635-200, paragraph 14-12c (2), with his service characterized as general under honorable conditions with the separation code of JKK (Misconduct Drug Abuse). He completed 1 year, 9 months and 1 day of net service this period.

g. His DD Form 214 shows he was awarded or authorized the:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon

4. By regulation, separations under the provisions of AR 635-200, chapter 14 provides 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.

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.

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.

2/27/2024

X [REDACTED]

CHAIRPERSON
[REDACTED]

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 635-200 (Active Duty Enlisted Administrative Separations) as in effect at the time, sets forth the basic authority for the separation of enlisted personnel, it states:
 - a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service has generally 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.
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.

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//