

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 December 2023

DOCKET NUMBER: AR20230006960

APPLICANT REQUESTS:

- upgrade of his under honorable conditions (general) discharge to honorable discharge
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his rank as private 2/E-2

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 believes that the type of separation and pay grade are incorrect. He was never reprimanded in the service in a way that would result in the downgrades shown on my DD Form 214 (Certificate of Release or Discharge from Active Duty).
3. The applicant enlisted in the Regular Army on 15 August 2000, for 4 years, completed training with award of military occupational specialty of 71L (Administrative Specialist). The highest grade he held was E-2.
4. Between 7 March 2001 and 26 July 2001, the applicant was formally counseled on 10 occasions for various infractions including but not limited to disrespect toward an NCO, being AWOL, and passing bad checks.
5. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice for the following offences:

a. On 1 June 2001 for being absent without leave from on or about 16 April 2001 until on or about 18 April 2001, with punishment of reduction to E-1 and forfeiture of \$243.00 for one month; and

b. On 9 July 2001, for disrespect toward a senior noncommissioned officer (the DA Form 2627 is not of record).

6. The available records do not include copies of the applicant's immediate commander's separation recommendation or the applicant's acknowledgement and elections.

7. A DA Form 3822-R (Report of Mental Status Evaluation), dated 15 August 2001, 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.

8. The base chaplain submitted a Letter of Input on 21 August 2001 noting he had counseled the applicant on his methods of interacting and coping with situations. The chaplain felt that with the right mentor and willingness to change, the applicant could continue to mature.

9. On 22 August 2001, the separation authority approved the discharge recommendation for separation under provisions of Army Regulation 635-200, paragraph 14-12b pattern of misconduct. He waived the rehabilitative transfer requirement and directed the applicant be issued a General Discharge Certificate.

10. The applicant was discharged on 28 August 2001, in the pay grade E-1. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12b, for a pattern of misconduct with an under honorable conditions (general) character of service, a separation code of JKA, and a Reentry Code 3. He was credited with 1 year and 14 days of net active service. He was awarded the Army Service Ribbon, the Expert Marksmanship Qualification Badge with Hand Grenade Bar, and the Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16). The DD Form 214 does not reflect his period of lost time due to being AWOL.

11. In determining whether to grant relief the Boards for Correction of Military/Navy 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:

After reviewing the application, supporting documents, evidence found within the military record, the Board found relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, applicable regulatory guidance and published DoD guidance for liberal consideration and clemency in determining discharge upgrade requests. The Board considered the frequency and severity of the misconduct, and whether there was sufficient evidence of mitigating circumstances to weigh in favor of clemency determination. After due consideration of the request, and, in the absence of post-service achievements or letters of reference to weigh in support of a clemency determination, the Board determined 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 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 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 15-185 (Army Board for Correction of Military Records) 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

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 14-12b (A pattern of misconduct) states a Soldier may be discharged for pattern of misconduct consisting of one of the following:

(1) Discreditable involvement with civil or military authorities.

(2) Discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

4. Army Regulation 635-5 (Separation Documents), in effect at the time, prescribed the separation documents that must be prepared for soldiers on retirement, discharge, release from active duty service, or control of the Active Army. It established standardized policy for preparing and distributing the DD Form 214. In block 4 (Grade, Rate or Rank), enter active duty grade or rank and pay grade at the time of separation from the Enlisted Record Brief.

5. 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//