

IN THE CASE OF: ██████████

BOARD DATE: 15 February 2024

DOCKET NUMBER: AR20230007570

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 15 March 2023
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 15 March 2023
- self-authored statement, 24 March 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 3 July 1985
- character references (9)
- certificate of ordainment, date unknown
- pictures of service (7)

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, while serving he made a significant lack in his judgement which led to a decision he has since regretted.

a. He joined the Army when he was young, and his life had no direction. The Army gave him purpose in life and hope he needed for a better life and future. He went to his first duty station, Korea, and he had the privilege of joining the boxing team and representing his unit. He worked exceptionally well with peers and superiors. Although, during his time in Korea he developed the habit of alcoholism. He was able to hide his issue until he went to his next duty station.

b. His alcoholism led him into fights, where he was arrested for fighting during a night out. When in court, he informed the Judge of his situation with alcoholism and asked for help. He accepted responsibility for his actions and the Judge ordered him to

take classes to overcome his problem. His Command barred him from reenlistment and discharged him with an UOTHC discharge. He was not given an opportunity to obtain legal counsel. He believed it could have redeemed his situation if he had been given a chance.

c. After his discharge, he and his wife went to a church where his life was turned around. He has become a Pastor in four different churches, traveled the world sharing religion, he supervised a drug and alcohol program at a church for 17 years. He commits his life to being the best man and has been clean from his addiction since November 1985. He humbly requests a discharge upgrade for his service.

3. The applicant enlisted in the Regular Army on 10 July 1980, for a period of 4 years. He held military occupational specialty 82C (Field Artillery Surveyor) and the highest rank he attained was specialist four/E-4.

4. Two DA Forms 4187 (Personnel Action) shows the applicant's duty status as:

- from present for duty (PFD) to confined civilian authorities on 9 May 1983
- confined to civilian authorities to PFD on 10 May 1983

5. The applicant received company grade non judicial punishment (NJP) on 21 November 1984, for unlawfully striking another Soldier in the face with a closed fist on or about 8 November 1984. His punishment imposed was reduction the rank of private first class/E-3, forfeiture of \$100.00, and extra duty for 14 days.

6. Two additional DA Forms 4187 show the applicant's duty status changed:

- from PFD to confined civilian authorities on 5 March 1985
- from confined civilian authority to PFD on 16 April 1985

7. On 14 May 1985, the applicant's immediate commander notified the applicant of his intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), paragraph 14-5a (Conviction by Civil Authorities). He noted the reasoning for the proposed separation was the applicant's conviction by civil authorities and sentence to confinement for 60 days.

8. On the same date, the applicant consulted with counsel and was advised of the basis for the contemplated action to separate him and of the rights available to him. He waived consideration by an administrative separation board and understood he may encounter prejudice in civilian life. Additionally, he elected to not submit a statement in his own behalf.

9. The applicant's commander formally recommended his separation from service under AR 635-200, Chapter 14. He noted the applicant had been convicted by civil authorities and sentenced to a period of confinement for 60 days.

10. On 18 June 1985, the applicant's intermediate commander recommended separation under AR 635-200, Chapter 14, and recommended approval of the request for waiver of rehabilitative transfer.

11. On 19 June 1985, the separation authority approved the recommended separation under AR 635-200, Chapter 14, and approved the request for waiver of rehabilitative transfer.

12. The applicant was discharged accordingly on 3 July 1985, under the provisions of AR 635-200, Chapter 14, Section II, by reason of civilian conviction, in the grade of E-1. His service was characterized as UOTHC. He received separation code of "JKB" and reentry code of "RE-4". He completed 3 years, 10 months, and 12 days of net active service with time lost on 5 March 1985 to 15 April 1985 and 9 May 1983.

13. The applicant applied to the Army Discharge Review Board for an upgrade to his characterization of discharge and narrative reason for separation. The Board reviewed the applicant's request on 8 June 1995. After careful consideration, the Board determined:

a. The characterization of discharge was proper and voted not to change it.

b. The narrative reason of separation was accepted, and the Board voted to grant relief and a DD Form 215 (Correction to DD Form 214) was issued to read in Item 28-misconduct.

14. He additionally provides:

a. Character references letters, dated from 14 February 2023 to 3 March 2023, wherein the authors attest to the applicant's good character. Stating, he is a man who serves his community and church. He is an honorable and humble man, a man of God, a role model, he has integrity, a kind heart, and has made and continues to make a positive impact on his peers, family, friends, and others in the community who may struggle with addiction to alcohol or substance abuse. The authors request the applicant's discharge be upgraded and thank the board for their consideration.

b. His general ministerial ordination certificate, stating he had met the requirements of the church and he was ordained to preach the gospel among the churches in the organization.

c. Pictures of service to the church, stating he was feeding, giving away coats, hats, and gloves to people in need.

15. Soldiers are subject to discharge under the provisions AR 635-200, Chapter 14 when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge of UOTHC is normally appropriate for a Soldier discharged under this chapter.

16. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the pattern of misconduct leading to the applicant's separation, some of which included violent behavior towards others, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

5/14/2024

X 

CHAIRPERSON


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. AR 635-200, in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.
 - 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 a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for the elimination of enlisted personnel for misconduct by reason of fraudulent enlistment/reenlistment, conviction by civil court (members who have been initially convicted or adjudged juvenile offenders), desertion and absence without leave, and other acts or patterns of misconduct. Paragraph 14-2 states, (2) a member confined

by civil authorities may be processed for separation when his military record indicates that he should be processed for separation under sections II or V of this chapter.

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/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//