

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2024

DOCKET NUMBER: AR20230008409

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 293 (Application for the Review of Discharge from the Armed Forces of the United States), 28 April 2023

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 is applying for jobs and benefits.
3. The applicant enlisted in the Regular Army on 14 July 1986, for a 3-year period. He was awarded the military occupational specialty of 12B (Combat Engineer) and the highest rank he attained was private first class/E-3.
4. Court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with breaking said restriction on or about 1 April 1989.
5. The applicant's immediate and intermediate commander recommended trial by summary court-martial on 3 May 1989.
6. A DD Form 2329 (Record of Trial by Summary Court-Martial) shows the preliminary proceeding was held on 15 May 1989, the applicant was charged with breaking restriction on or about 1 April 1989. The sentence imposed was forfeiture of \$466.00 and confinement for 30 days. Additionally, his sentence was approved and ordered to be executed on 23 May 1989.

7. A DA Form 4187 (Personnel Action) shows the applicant was confined to the installation detention facility by order of the court-martial authority on or about 15 May 1989.

8. On 24 May 1989, the applicant's immediate commander notified the applicant of the intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), paragraph 14-12c (Commission of a Serious Offense). The commander noted his reasons for the proposed action were the following:

- summary court-martial conviction for breaking restriction dated 15 May 1989
- violating a general regulation dated 23 May 1989
- disobeying a lawful order dated 13 February 1988
- drunk and disorderly dated 7 October 1987

9. On the 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. The applicant submitted a conditional waiver upon receiving an under honorable conditions (general) discharge. He requested consideration, a personal appearance, and consulting counsel before an administrative separation board if his conditional waiver was not accepted. He additionally understood, he may encounter prejudice in his civilian life.

10. On 25 May 1989, the applicant's immediate commander informed the command of the intent to separate the applicant under the provisions of AR 635-200, Chapter 14, specially readdressing the applicant's violation of a general regulation, failure to report, disobeying a lawful order, and for drunk and disorderly.

11. On 30 May 1989, the applicant's intermediate commander recommended the applicant's case be heard by a board of officers and he receive an other than honorable discharge certificate.

12. A DA Form 4187, shows the applicant was released from confinement and his status changed to present for duty on 8 June 1989.

13. On 15 June 1989, the applicant's intermediate commander recommended approval of the proposed separation, further stating the applicant had been involved in numerous offenses including: being drunk on duty, disobeying a noncommissioned officer, failing to be at his place of duty, and having drunk and disorderly conduct. He recommended the applicant be separated from the service with an UOTHC discharge.

14. On 23 June 1989, the separation authority disapproved the applicant's request and referred the case to an administrative separation board for consideration.

15. On 5 July 1989, the applicant waived his right to a separation board and submitted an unconditional waiver of his own free will.

16. On 17 July 1989, the separation authority approved the recommended separation, waived the rehabilitative transfer, and directed the applicant receive an UOTHC characterization of service.

17. The applicant was discharged on 21 July 1989, under the provisions of AR 635-200, Chapter 14, by reason of misconduct. His DD Form 214 confirms his service was characterized as UOTHC with separation code JKQ and reenlistment code 3. He was credited with 2 years, 11 months, and 14 days of net active service with time lost from 15 May 1989 to 7 June 1989.

18. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200, Chapter 14, for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

19. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The applicant was discharged for misconduct – commission of a serious offense (being drunk on duty, disobeying an NCO, failing to be at his place of duty, and having drunk and disorderly conduct). He received an under other than honorable conditions discharge, which the Board determined to be too harsh/severe for the type of infractions that led to his separation and in view of his nearly 3 years of active service. As a result, the Board determined an upgrade to honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests is appropriate. The Board also determined that such upgrade also warrants a change the underlying reason for his separation, and that there would be a change to the narrative reason for separation and/or corresponding codes.

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 is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 21 July 1989, showing:

- Character of Service: Honorable
- Separation Authority: AR 635-200
- Separation Code: JFF
- Reentry Code: 1
- Narrative Reason for Separation: Secretarial Authority

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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. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 used for a Soldier 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.

(1) Paragraph 14-3 states 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 such is merited by the Soldier's overall record.

(2) Section III (Acts or Patterns of Misconduct), paragraph 14-12c, states Soldiers are subject to discharge for Commission of a serious offense. Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the MCM. Specific instances of serious offenses include abuse of illegal drugs or alcohol.

(3) 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 such is merited by the Soldier's overall record. 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.

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 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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//