

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 1 March 2024

DOCKET NUMBER: AR20230008560

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions (general) 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)

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 requesting an upgrade so he can receive all his VA (Department of Veterans Affairs) benefits.
3. Review of the applicant's service records shows:
  - a. He enlisted in the Regular Army on 4 March 2003. He completed training and was awarded military occupations specialty 21B, Combat Engineer.
  - b. He was promoted to private first class (PFC)/E-3 in February 2004. He was assigned to a Special Troop Battalion at Fort Drum, NY.
  - c. On 25 May 2005, he was convicted by a special court-martial of the following charges and specifications under the Uniformed Code of Military Justice (UCMJ):
    - (1) Charge I, Article 86, four specifications of being absent without leave (AWOL). Plea: Guilty. Finding: Guilty

(2) Charge II, Article 92, one specification of violating a lawful general regulation, by wrongfully having a blood alcohol level equal to or greater than .05 grams of alcohol per 100 milliliters of blood while on duty. Plea: Guilty. Finding: Guilty

(3) Additional Charge I: Article 121, one specification of wrongfully appropriating United States currency, of a value of about \$850,00, the property of Specialist (E-4) F.B. Plea: Guilty. Finding: Guilty.

(4) Additional Charge II: Article 123, three specifications of, with intent to defraud, falsely making in its entirety 3 certain checks made payable to the order of [Names] in the amount of four hundred dollars, three hundred dollars, and one hundred fifty dollars, which said checks would, if genuine, apparently operate to the legal harm of another. Plea: Guilty. Finding: Guilty.

(4) Additional Charge III: Article 130, one specification of unlawfully entering Room [Number], Building [Number], the property of Specialist (E-4) F.B., with intent to commit a criminal offense, wrongful appropriation. Plea: Guilty. Finding: Guilty.

d. The court sentenced him to forfeit \$822 pay per month for 6 months; to be confined for 6 months; and to be reprimanded. The military judge credited the accused with 57 days of pretrial confinement.

e. The convening authority would later (October 2005) approve the sentence and order it executed. The accused would be credited with 57 days of confinement against his sentence to confinement.

f. On 29 August 2005, 3 September 2001, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him in accordance with Army Regulation (AR) 635-200 (Personnel Separations; now called Active Duty Enlisted Separation), paragraph 14-12c, for misconduct - commission of a serious offense. The commander recommended an under honorable conditions (general) discharge. The specific reasons: On 25 May 2005, he was tried and found guilty by Special Court-Martial of violation of the UCMJ, 4 Specifications, AWOL, Violate lawful general regulation, Larceny 3 Specifications, Forgery, and Housebreaking.

g. The applicant acknowledged receipt of the commander's intent to separate him and subsequently consulted with legal counsel. He was advised of the basis for the contemplated separation for misconduct, 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 that were available to him. He did not qualify for an administrative board because he had less than 6 years of total service. He further indicated that he understood:

- He could expect to encounter substantial prejudice in civilian life if a general discharge was issued to him
- He could be ineligible for many or all benefits as a veteran under Federal and State laws as a result of the issuance of an under other than honorable conditions discharge
- He could submit a person statement but elected not to do so

h. After the applicant's acknowledgement, the applicant's immediate commander formally initiated separation action against him in accordance with AR 635-200, paragraph 14-12c, for misconduct - commission of a serious offense.

i. On or about 15 November 2005, the separation authority approved the applicant's discharge from the Army and ordered him discharged under the provisions of chapter 14-12c of AR 635-200, by reason of misconduct - commission of a serious offense and directed his service be under other honorable conditions (general). On 16 November 2005, the applicant was discharged accordingly.

j. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under AR 635-200, chapter 14-12c, by reason of misconduct - commission of a serious offense with an under other than honorable conditions (Separation Code JKQ, Reentry Code 3). He completed 2 years, 2 months, and 16 days of active service. His DD Form 214 shows he was awarded or authorized: National Defense Service Medal, Global War on Terrorism Service Medal, and Army Service Ribbon.

k. There is no indication the applicant has requested review of his administrative discharge by the Army Discharge Review Board.

4. By regulation, Soldiers are subject to separation under the provisions of paragraph 14-12c of AR 635-200 for a commission of a serious offense. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

5. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

#### BOARD DISCUSSION:

1. The Board carefully considered the applicant's request for an upgrade of his characterization of service, his statement, the evidence or record, and the applicable Army Regulations, Statutory guidance, and the published Department of Defense

guidance for consideration of discharge upgrade requests based upon clemency, and found relief was not warranted.

2. The applicant's record outlines a history of misconduct, which includes multiple AWOLs and larceny. He states he is requesting an upgrade of his characterization so he can obtain his full VA benefits package, but he does not provide the Board with any argument or evidence on which to base a clemency consideration.

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, 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) set forth the basic authority for the separation of enlisted personnel. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. 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 was normally appropriate for a Soldier discharged under this chapter.

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.

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. 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 based on 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. 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//