

IN THE CASE OF: ██████████

BOARD DATE: 21 February 2024

DOCKET NUMBER: AR20230008846

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge to honorable.

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 the condition of misconduct was an “agreeable term” between the battalion leadership and himself to expedite the separation. He feels he had impeccably honorable service from 1987 through 1999. Upon separation, he was informed he would be eligible to request “altering” of his discharge and he never followed up on the pursuit of this option.
3. A review of the applicant’s service record shows:
  - a. Having had prior service, he enlisted in the Regular Army on 11 April 1995.
  - b. On 8 March 1998, the applicant received a letter of reprimand for failure to maintain control and accountability of the M8 alarm. He displayed poor judgment and lack of control by leaving the RSOP trailer and all of its equipment unsecured. The M8 alarm was a sensitive item that could have resulted in a lock down for the unit at the field location.
  - c. A DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG)) shows a flag was initiated on the applicant for adverse action effective 16 May 1999.
  - d. On 14 July 1999, the applicant’s immediate commander notified the applicant of his intent to separate him under the provisions of AR 635-200, Chapter 14-12c, for

commission of a serious offense. The reason for his proposed action was for the applicant receiving an Article 15 for dereliction of duty. The applicant acknowledged receipt on the same day.

e. On 15 July 1999, after waiving consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general, under honorable conditions discharge was issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he will be ineligible to apply for enlistment for a period of 2 years after discharge

f. On 17 June 1999, he accepted nonjudicial punishment for one specification of dereliction of duty in that he “negligently failed to follow procedures for a correct crewdrill” by conducting a march order and emplacement by himself. His punishment included reduction to specialist (SPC)/E-4 and forfeiture of \$772.00 pay per month for 2 months, suspended for 6 months.

g. The immediate commander initiated separation action against the applicant under the provisions of Army Regulation (AR) (Personnel Separations – Enlisted Personnel) 635-200, Chapter 14-12c, for commission of a serious offense. The commander recommended a general, under honorable conditions discharge. The intermediate commander recommended approval.

h. On 19 July 1999, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12c for commission of a serious offense. He would be issued a general, under honorable conditions characterization of service.

i. On 22 July 1999, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 4 years, 3 months, and 12 days of active service with no lost time. He was assigned separation code JKQ and the narrative reason for separation listed as “Misconduct,” with reentry code 3. It also shows he was awarded or authorized:

- Army Commendation Medal
- Army Achievement Medal
- Army Good Conduct Medal
- National Defense Service Medal
- Noncommissioned Officer Professional Development Ribbon

- Army Service Ribbon
- Overseas Service Ribbon

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as commission of a serious offense, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

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

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. One potential outcome was to deny relief based on the misconduct. However, upon review of the applicant's petition and available military records, the Board determined based on the applicant's prior period of honorable service, his decorations and awards and length of service there is sufficient evidence to support clemency with an upgrade to honorable. The Board found no error or injustice with his narrative reason or separation code. The Board agreed the applicant has no other infractions during his service, based on this, the Board granted relief to upgrade his characterization of service to honorable.

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 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 re-issuing the applicant's DD Form 214 for the period ending 22 September 1999 to show in item 24 (Character of Service): "Honorable."

3/4/2024

X [REDACTED]

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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.

ADMINISTRATIVE NOTE(S): N/A

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 (Personnel Separations – Enlisted Personnel), in effect at the time, sets 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 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

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 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.

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//