

IN THE CASE OF: ██████████

BOARD DATE: 31 January 2024

DOCKET NUMBER: AR20230008875

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)
- Department of Veterans Affairs (VA) Letter, dated 10 January 2019

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 needs his DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect the correct discharge. It currently states general, under honorable conditions and it should be corrected to reflect honorable. He is applying for jobs and needs the correct discharge. He did not have anyone leading him in the right direction to help him apply for the correction.
3. The applicant provides a letter from the VA, dated 10 January 2019, wherein he highlights his character of discharge was shown as honorable for the service period from 26 January 2005 to 9 June 2007.
4. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 26 January 2005.
  - b. An excerpt from a military police report (MPR) shows on 21 November 2006, the applicant tested positive for tetrahydrocannabinol (THC) on a routine urinalysis. The applicant was advised of his rights, which he waived, and rendered a written statement admitting to the offense.

c. A DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG)) shows a flag was initiated on the applicant for adverse action effective 27 November 2006.

d. The applicant was subsequently enrolled in the Army Substance Abuse Program (ASAP) on 28 November 2006, as evidenced by DA Form 8003 (ASAP Enrollment).

e. On 8 January 2007, he accepted nonjudicial punishment for one specification of wrongful use of marijuana, a controlled substance, between on or about 26 September 2006 and 26 October 2006. His punishment included reduction to private first class (PFC)/E-3 and forfeiture of \$750.00 pay per month for 2 months, suspended for 6 months.

f. On 10 January 2007, he received an administrative reprimand for wrongful use of a controlled substance. Specifically, the applicant tested positive for THC on a urinalysis conducted on 22 October 2006 [sic]. On 18 January 2007, the applicant acknowledged receipt of the reprimand and elected not to submit matters.

g. On 9 March 2007, after reviewing the reprimand and the applicant's rebuttal, the imposing commander directed the letter of reprimand be filed in his Official Military Personnel File (OMPF).

h. The service record includes the applicant's medical evaluation for the purpose of administrative separation which indicated he was generally in good health and was released from ASAP. The applicant was marked qualified for service.

- Mental Status Report dated 15 February 2007
- DD Form 2807-1 (Report of Medical History) dated 27 February 2007
- DD Form 2808 (Report of Medical Examination) dated 23 March 2007

i. On 13 April 2007, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, for commission of a serious offense. The reason for his proposed action was for the applicant receiving a positive result on an Army urinalysis test for THC. The applicant acknowledged receipt on the same day.

j. On 20 April 2007, 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 character of service that is less than honorable 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
- he elected not to submit matters on his own behalf

k. On 20 April 2007, the immediate commander-initiated separation action against the applicant under the provisions of AR 635-200, Chapter 14-12c, for commission of a serious offense. The commander recommended a general, under honorable conditions discharge. The intermediate commander recommended disapproval and a rehabilitative transfer.

l. On 24 April 2007, 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.

m. A memorandum from the separation authority, dated 24 April 2007, notified the applicant that although he approved his separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12c for commission of a serious offense, he would suspend the execution of the separation for a period of 6 months. The applicant was placed on a probationary period and if he failed to meet the appropriate standards of conduct and duty performance, the suspension could be vacated and immediately executed.

n. On 11 May 2007, he received an administrative reprimand for operating a vehicle under the influence of alcohol on 26 April 2007. Specifically, the investigation revealed that his blood alcohol content was 0.056% BAC, as reflected by a breath analysis test. His breach of good conduct demonstrated a gross lapse in judgment and caused him to question whether he could be counted on to successfully perform at the level the Army demanded from its Soldiers. On 31 May 2007, the applicant acknowledged receipt of the reprimand and elected not to submit matters.

o. After reviewing the reprimand and the applicant's rebuttal, the General Court Martial Convening Authority directed the letter of reprimand be filed in his OMPF.

p. On 16 May 2007, the applicant was notified the separation authority was considering vacation of the suspension of your approved separation for commission of a serious offense. The applicant had the right to consult with counsel.

q. On 24 May 2007, the separation authority vacated the suspension of the approved 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.

r. On 9 June 2007, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 shows he completed 2 years, 4 months, and 14 days of active service. Block 18 (Remarks) shows he served in Iraq from 6 August 2005 to 8 August 2006. He was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct (Serious Offense)," with reentry code 3. It also shows he was awarded or authorized:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Driver and Mechanic Badge

5. On 13 October 2010, the applicant was notified the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. 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.

7. 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:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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. Upon review of the applicant's petition and available military records, the Board found insufficient evidence of in-service mitigating factors to overcome the misconduct of a positive urinalysis, possession, and a DUI 6 months later. The Board noted, the applicant provided insufficient evidence of post-service achievement or character letters of support that could attest to his honorable conduct that might have mitigated the discharge characterization.

2. The Board noted, the applicant was discharged for misconduct and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Therefore, the Board denied relief.

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 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.

2/6/2024

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CHAIRPERSON

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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), 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. Paragraph 14-12c further states commission of a serious offense includes abuse of illegal drugs or alcohol.

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//