

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 March 2024

DOCKET NUMBER: AR20230008990

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

APPLICANT'S SUPPORTING DOCUMENT CONSIDERED BY THE BOARD:

DD Form 293 (Application for the Review of Discharger 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 (USC), 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 attempting to have his discharge upgraded so he can utilize the Post 9-11 GI Bill to attend truck driver training. Becoming a truck driver will enable him to better himself and help him provide better care for his family and loved ones. Now he realizes the extent of his actions that resulted in his discharge, but he was young and foolish then. Since his discharge, he no longer drinks and being granted this opportunity would enable him to show his kids and loved ones that he has changed.
3. The applicant enlisted in the Regular Army on 3 September 2013 for a period of 4 years. Upon completion of initial entry training, he was assigned to a unit in South Korea. He was subsequently reassigned to a unit Fort Gordon, GA. He was promoted to the rank/pay grade of specialist/E-4 on 1 December 2015.
4. A Law Enforcement Report rendered by the Officer of the Provost Marshall, Fort Gordon, GA on 29 September 2016, shows the applicant was apprehended and charged with Driving Under the Influence (DUI) of Alcohol – without personal injury on 12 September 2016.
5. On 12 October 2016, the applicant received a General Officer Memorandum of Reprimand (GOMOR) from the Commanding General (CG) of the U.S. Army Cyber

Center of Excellence and Fort Gordon, for DUI of alcohol on or about 12 September 2016. On 10 November 2016, after reviewing the GOMOR and the applicant's rebuttal matters, the CG directed filing the GOMOR and the enclosures in the applicant's Army Military Human Resource Record.

6. On 31 January 2017, an administrative flag was imposed against the applicant to prevent him from receiving any favorable personnel actions while he was pending a field initiated involuntary separation.

7. On 1 May 2017, the applicant underwent a separation medical examination and was determined to be qualified for service and/or administrative separation actions.

8. On 18 May 2017, the applicant underwent a mental status evaluation, and it was determined that he had no duty limitations due to behavioral health reasons and that he met medical retention standards. He was mentally responsible and could understand and participate in administrative proceedings and appreciated the difference between right and wrong. He was cleared for administrative actions.

9. The applicant's immediate commander notified the applicant of his intent to initiate actions to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, for commission of a serious offense. He was advised that he was being recommended for a general, under honorable conditions discharge, but the final determination of his characterization of service would be made by the separation authority. The applicant acknowledged receipt of the proposed separation notification on 18 July 2017.

10. On 25 July 2017, the applicant acknowledged that he was advised of the reasons for separation and of the rights available to him. He consulted with counsel and submitted a conditional election of rights wherein he elected to submit statements in his own behalf, and to waive consulting counsel and representation by military counsel and/or civilian counsel.

11. On 2 August 2017, the applicant's immediate commander formally recommended his separation prior to the expiration of his term of service under the provisions of Army Regulation 635-200, paragraph 14-12c by reason of commission of a serious offense. The interim commander recommended that his service be characterized as honorable.

12. On 7 August 2017, the separation authority approved the recommendation for separation, and directed the applicant be issued a general, under honorable conditions discharge.

13. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged on 17 August 2017, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of Misconduct (Serious Offense), with separation code "JKQ" and reentry code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 3 years, 11 months, and 15 days of net active service this period and had no lost time. He did not complete his first full term of service.

14. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his discharge. On 16 December 2019, the applicant was informed that after careful review of his application, military records, and all other available evidence, the ADRB had determined that he was properly and equitably discharged and denied his request.

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

#### BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was discharged from active duty due to Misconduct – commission of a serious offense. He received a general discharge. The Board found no error or injustice in his separation processing. Additionally, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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.

█

█ █

---

█

█

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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.

3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b states 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 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. 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 merited by the Soldier's overall record.

4. 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//