

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 April 2024

DOCKET NUMBER: AR20230009590

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (general) discharge
- correction of his DD Form 214 (Certificate of Release or Discharge) to show he was awarded or authorized to wear the:
 - Army Commendation Medal (ARCOM)
 - German Army Marksmanship Badge
 - German Army Physical Training Badge

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214

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 his characterization of service should be upgraded because his leadership failed him. He was discharged because a staff sergeant/E-6 talked him into bringing alcohol into the field. His DD Form 214 is missing the requested award and badges. Only 5 percent of the Army has earned the German Physical Fitness Badge.
3. On 25 January 2005, the applicant enlisted into the Regular Army for a period of 5 years. Upon completion of initial entry training, he was assigned to a unit at Fort Bliss, TX.
4. On 12 October 2005, the applicant accepted summarized company grade nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for failing to obey a lawful order issued by a superior commissioned

officer by wrongfully possessing a smokeless tobacco product on or about 2 October 2005. His punishment consisted of extra duty and restriction for 14 days.

5. On 21 October 2005, the applicant accepted company grade NJP under the provisions of Article 15, of the UCMJ for treating a noncommissioned officer (NCO) with contempt by continuously cutting him off during a conversation on or about 14 October 2005. His punishment consisted of reduction from the private (PVT)/E-2 to E-1; forfeiture of \$288.00 pay, (suspended, to be automatically remitted if not vacated before 19 April 2006); extra duty for 14 days; and restriction for 14 days.

6. The applicant's Enlisted Record Brief shows he was advanced to E-2 on 5 May 2006, and to private first class (PFC)/E-3 on 9 December 2006.

7. On 6 June 2007, the applicant accepted field grade NJP under the provisions of Article 15, of the UCMJ for being derelict in the performance of his duties by bringing alcohol in a field environment exercise on or about 12 May 2007. His punishment consisted of reduction from PFC to PVT/E-1; forfeiture of \$650.00 pay per month for 2 months; extra duty for 45 days; and restriction for 45 days.

8. On 20 June 2007, an administrative flag was imposed upon the applicant to prevent him from receiving favorable actions because he was pending field-initiated elimination.

9. On 26 June 2007, the applicant underwent a medical examination and was deemed medically qualified for continued service and/or separation.

10. On 26 June 2007, the applicant underwent a behavioral health evaluation and was determined to be mentally responsible and to have the mental capacity to understand and participate in the proceedings. There was no evidence of any mental disease or defect, which would warrant a disposition through medical/psychiatric channels. As a result, he was cleared for any administrative action deemed appropriate by command.

11. On 27 June 2007, the applicant was counseled by his immediate commander. She noted the applicant had recently received field grade NJP from his battalion commander and during that session, the applicant had informed the battalion commander that he no longer wished to be in the military and that he had received three additional NJPs while attending Advanced Individual Training. As a result, he was being administratively separated for patterns of misconduct.

12. On 2 July 2007, the applicant's immediate commander notified the applicant that she was initiating actions to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, for a pattern of misconduct. The specific reasons for this action were the applicant's failure to follow a written order, dereliction of duty, and disrespect towards an NCO. He was advised that

he was being recommended for a under honorable conditions (general) discharge. The applicant acknowledged receipt of the proposed separation notification on the same date.

13. On 6 July 2007, 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 waive his rights to:

- consideration of his case by an administrative separation board (ASB) conditioned upon his receipt of a general discharge
- personal appearance before an ASB conditioned upon his receipt of a general discharge
- submit statements in his own behalf.
- consult with consulting counsel and representation by military counsel and/or civilian counsel

14. On 6 July 2007, 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 14-12b by reason of a pattern of misconduct. The interim command concurred.

15. On 9 July 2007, the separation authority approved the recommended separation, and directed the applicant be issued a general, under honorable conditions discharge.

16. Orders and the applicant's DD Form 214 show he was discharged on 16 July 2007, under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of Pattern of Misconduct, with separation code JKA and reentry code 3. His service was characterized as under honorable conditions (general). He was credited with completion of 2 years, 5 months, and 22 days of net active service this period. Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows he was awarded or authorized the:

- Army Achievement Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon

17. The applicant's record is void of evidence and he has not provided any evidence showing he was awarded or authorized to wear any awards or decorations not currently reflected on his DD Form 214.

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. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of bringing alcohol to the field. The Board noted, the applicant provided insufficient evidence of post-service achievements or character letters of support that could attest to his honorable conduct that might have mitigated the discharge characterization.

2. This board is not an investigative body. The Board determined despite the absence of additional documentation within the applicant's records, they agreed the burden of proof rest on the applicant, however, he did not provide any supporting documentation and his service record has insufficient evidence to support the applicant contentions for award of Army Commendation Medal (ARCOM), German Army Marksmanship Badge and the German Army Physical Training Badge. Additionally, the applicant is advised that foreign awards are not annotated on a DD Form 214. 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. Based on this, 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.

4/11/2024
X [REDACTED]
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.

REFERENCES:

1. Title 10, U.S. Code, 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. 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.

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. Army Regulation 600-8-22 (Military Awards) provides Department of the Army policy, criteria, and administrative instructions concerning individual military decorations, Good Conduct Medal, service medals and service ribbons, combat and special skill badges and tabs, unit decorations, and trophies and similar devices awarded in recognition of accomplishments. This regulation provides, in part:

a. the Army Commendation Medal may be awarded to any member of the Armed Forces of the United States who, while serving in any capacity with the Army after 6 December 1941, distinguishes himself or herself by heroism, meritorious achievement, or meritorious service. As with all personal decorations, formal recommendations, approval through the chain of command, and announcement in orders are required.

b. Commanders serving in the rank of brigadier general or higher and colonel-level commanders who exercise general court-martial authority are delegated authority to approve the acceptance, retention, and permanent wear of foreign badges listed in appendix D of this regulation. Foreign qualification and special skill badges may be accepted if awarded in recognition of meeting the criteria, as established by the foreign government concerned, for the specific award. Only those badges which are awarded in recognition of military activities and by the military department of the host country are authorized for acceptance and permanent wear. Badges which do not meet these criteria may be authorized for acceptance, but not for wear, and will not be entered in the official military records of the recipient. The German Army Marksmanship Badge is listed as authorized for acceptance and wear upon the U.S. Army Uniform. The German Sports Badge is listed as authorized for acceptance, but not for wear upon the U.S. Army Uniform.

5. Army Regulation 635-5 (Personnel Separations – Separation Documents), in effect at the time, prescribed the separation documents which were prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. It established standardized policy for preparing and distributing DD Form 214.

a. The following documents were to be used as source documents when preparing DD Form 214:

- DA Form 201 (Military Personnel Records Jacket, U.S. Army)
- DA Form 2 and 2-I (Personnel Qualification Records)
- Separation orders
- DD Form 4/4 (Enlistment/Reenlistment Document/Armed Forces of the United States)
- DA Form 3716 (Personnel financial Record, US Army)
- Enlistment records and DD Forms 214 for prior service personnel
- Any other available records

b. In block 13, list awards and decorations for all periods of service in the priority sequence specified in Army Regulation 600-8-22. Each entry will be verified by the Soldier's records.

6. 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, 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//