

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 May 2024

DOCKET NUMBER: AR20230010217

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- two letters of support
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 1 March 2003

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 innocence of an incident he was accused of and states a determination to discharge him with an other than honorable discharge was made based upon the incident. He is requesting a discharge upgrade in order to have access to benefits with the Department of Veterans Affairs.
3. The applicant provides:
 - a. A letter of support from a current co-worker of 10 months, who states, that the applicant shows true grit and determination daily and constantly pushing himself to get better every day. The letter of support also states that the applicant is a good father, a born again Christian, an extremely hard worker and a valuable member of society. He recommends the applicant receive help because the applicant is a veteran trying to better himself, his family, and his daily life.
 - b. A letter of support from the director of a recovery transition home. The Director states that the applicant has been living there since 2 May 2022 and is an outstanding individual and an asset to the community.

4. He enlisted in the Regular Army on 5 June 2001.

5. The service record includes the applicant's medical evaluation for the purpose of administrative separation the applicant marked he had numerous health concerns. The applicant was marked qualified for service.

- DD Form 2807-1 (Report of Medical History) dated 19 August 2002
- DD Form 2808 (Report of Medical Examination) dated 19 August 2002

6. A DA Form 3822-R (Report of Mental Status Evaluation), dated 3 September 2002, confirmed the applicant was referred for a mental evaluation because he was being considered for discharge because of misconduct. The physician noted in the remarks, the applicant does not suffer from psychiatric disease, defect or personality disorder and was psychiatrically cleared for any administrative action deemed appropriate by the command. The evaluation further indicated:

- normal behavior and fully alert
- fully oriented and unremarkable mood
- clear thinking process and normal thought content
- good memory and had the mental capacity to understand and participate in the proceedings
- he was mentally responsible
- he meets the retention requirements of chapter 3, AR 40-501

7. On 22 December 2002, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12c, for commission of a serious offense. The reason for his proposed action is: carnal knowledge and indecent acts with a minor, drunk driving, and disobeying an order from a commissioned officer. The applicant acknowledged receipt on 27 December 2002.

8. On 11 January 2003, after consulting with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may expect to encounter substantial prejudice in civilian life if a general discharge (under honorable conditions) is issued to him
- he further understands that, as the result of issuance of a discharge under other than honorable conditions, he may be ineligible for many or all benefits as a veteran under both Federal and State laws and that he may expect to encounter substantial prejudice in civilian life
- 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

9. 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 intermediate commanders recommended approval with an under other than honorable conditions characterization of service.

10. 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 under other than honorable conditions characterization of service.

11. On 1 March 2003, he was discharged from active duty with a under other than honorable conditions characterization of service. His DD Form 214 shows he completed 1 year, 8 months, and 27 days of active service. 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 the Army Service Ribbon.

12. 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 them as a satisfactory Soldier, further effort is unlikely to succeed.

13. 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. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. The Board found the applicant's characterization of service to be appropriate. He was separated for carnal knowledge and indecent acts with a minor, drunk driving, and disobeying an order. The severity of his acts justify his characterization of service and the reason for his discharge.

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

c. Paragraph 14-12c (Commission of a Serious Offense) applied to Soldiers who committed a serious military or civilian offense, when required by the specific circumstances warrant separation and a punitive discharge was or could be authorized for that same or relatively similar offense under the UCMJ. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

3. Army Regulation 635-5 (Separation Documents) states to list awards and decorations for all periods of service in the priority sequence specified in Army Regulation 600-8-22. Army Regulation 600-8-22 gives the order of precedence for awards and decorations. Only decorations, medals, and ribbons are listed. Certificates of achievement, letters of appreciation, and similar documents are not listed.

4. Army Regulation 600-8-22 (Military Awards) states the National Defense Service Medal is awarded for honorable active service for any period between 27 June 1950 and 27 July 1954, 1 January 1961 and 14 August 1974, 2 August 1990 and 30 November 1995, and 11 September 2001 and a date to be determined. Executive Order 12776 extended award of the National Defense Service Medal to all members of the Army National Guard and the U. S. Army Reserve who were part of the Selected

Reserve in good standing during the period 2 August 1990 through 30 November 1995. Members of other than the Selected Reserve who were called to active duty will also be eligible. During these periods, service members in the following categories will not be considered eligible for the National Defense Service Medal: (1) any service member on active duty for the sole purpose of undergoing a physical examination; or (2) any Soldier of the Individual Ready Reserve, Inactive National Guard, or the Standby or Retired Reserve whose active duty service was for training only or to serve on boards, courts, commissions, and like organizations.

//NOTHING FOLLOWS//