

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 May 2024

DOCKET NUMBER: AR20230010573

APPLICANT REQUESTS: Upgrade of his under honorable conditions (general) discharge.

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 his request should be considered because of changes in him.
3. The applicant enlisted in the Regular Army on 13 January 1988, for 4 years. Upon completion of training, he was awarded military occupational specialty 11B (Infantryman).
4. The applicant received formal counseling on the following dates/for:
  - 13 May 1988; not being prepared for inspection
  - 14 May 1988; not being prepared for inspection
  - 19 May 1988; poor duty performance
  - 27 June 1988; failure to follow instructions
  - 22 July 1988; substandard duty performance, writing bad checks
  - 16 August 1988; being late to formation
  - 7 November 1988; lying to a noncommissioned officer
  - 23 November 1988; failure to pay his debts
  - 3 December 1988; writing bad checks
  - 13 December 1988; failure to repair
  - 8 February 1989; failure to return to his appointed place of duty, writing bad checks, underage drinking

5. On 22 March 1989, the applicant received non-judicial (NJP) punishment under Article 15 of the Uniform Code of Military Justice, for writing bad checks on six occasions, between 15 November 1988 and 13 January 1989. His punishment included reduction in grade to E-1, forfeiture of \$163.00, and 14 days restriction and extra duty.
6. The applicant received further counseling on the following dates/for:
  - 3 April 1989; drinking alcohol while on restriction and extra duty
  - 30 June 1989; failure to adapt, failing to be at his appointed place of duty
7. On 27 July 1989, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.
8. On 28 July 1989, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
9. The applicant's commander notified him on 16 August 1989, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c, for commission of a serious offense. As the specific reasons, his commander cited the applicant's NJP, appearance on the military police blotter report, numerous occasions of disrespect, failure to repair, dereliction of duty, and drinking on duty.
10. The applicant's commander formally recommended his separation prior to his expiration term of service, under the provisions of Army Regulation 635-200, paragraph 14-12c, for commission of a serious offense.
11. On 17 August 1989, the applicant acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him. He declined to submit a statement in his own behalf.
12. By legal review, the applicant's separation action was found to be legally sufficient for further processing.
13. Consistent with the chain of command's recommendation, the separation authority approved the recommended discharge on 18 August 1989, and directed the issuance of a DD Form 257A (General Discharge Certificate).
14. The applicant was discharged on 28 August 1989. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the

provisions of Army Regulation 635-200, paragraph 14-12c, for misconduct – commission of a serious offense. His service was characterized as under honorable conditions (general). He completed 1 year, 7 months, and 16 days of net active service this period.

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:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined 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.

9/24/2024

X

CHAIRPERSON

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 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.
  - c. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed. Paragraph 14-12c (Commission of a Serious Offense) applied to commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would

be, authorized for the same or a closely related offense. First time offenders below the grade of sergeant, and with less than 3 years of total military service, may be processed for separation as appropriate.

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/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.

//NOTHING FOLLOWS//