

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2024

DOCKET NUMBER: AR20230011022

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions (general) to honorable.

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

Army Review Boards Agency (ARBA) Case Tracking System Online Application,
11 August 2023

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, in effect, he believes his discharge should be upgraded to honorable because his discharge was based on adverse prejudicial treatment he received while serving.
3. The applicant enlisted in the Regular Army on 18 October 1984 for a 4-year period. He was awarded military occupational specialty 33R (Electronic Warfare/Intercept Aviation Systems Repairer) and the highest rank he attained was specialist four/E-4.
4. He was formally counseled on approximately six occasions between 9 July 1986 and 23 October 1986. Areas of emphasis covered in the counseling include, but are not limited to:
 - failing to be at his appointed place of duty
 - writing a dishonored check
5. On 14 November 1986 he accepted nonjudicial punishment (NJP), under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for failing to go to his prescribed place of duty on or about 23 October 1986 and for writing dishonored checks to the Post Exchange and Domino's Pizza. His punishment imposed was

reduction to the grade of E-3, forfeiture of \$392.00 for one-month, extra duty for 45 days, and restriction for 45 days.

6. He was formally counseled on 3 April 1987 and 6 April 1987 showing he was being referred to the chain of command for separation and he was late for duty.

7. On 13 April 1987, the applicant's immediate commander notified the applicant of the intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12b, for acts or patterns of misconduct. The commander noted the specific reason as the applicant's failure to support his child, multiple failures to report, writing dishonored checks, and having an indebtedness problem. He recommended the applicant receive a under honorable conditions (general) discharge.

8. On the same date, the applicant's immediate commander formally recommended him for separation under the provisions of AR 635-200, paragraph 14-12b, prior to his expiration term of service.

9. The applicant consulted with counsel on 22 April 1987 and was advised of the basis for the contemplated action to separate him and of the rights available to him. He did not waive his rights to counsel, and elected to submit a statement in his behalf, although this statement is void the applicant's official military personnel file. Additionally, he understood he may encounter prejudice in civilian life if an under other than honorable conditions discharge was issued to him.

10. On 28 April 1987 the applicant's intermediate commander's recommended approval of the separation action under the provisions of AR 635-200, Chapter 14 (Misconduct), with a characterization of service of under honorable conditions (general).

11. On 1 May 1987, the separation authority approved the recommended separation under the provisions of AR 635-200, Chapter 14, and further directed issuance of a General Discharge Certificate.

12. The applicant was discharged on 21 May 1987 under the provisions of AR 635-200, Chapter 14, by reason of misconduct – pattern of misconduct, in the grade of E-3. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was characterized as under honorable conditions (general). He was credited with 2 years, 7 months, and 4 days of net active service.

13. The Army Discharge Review Board (ADRB) considered the applicant's request for an upgrade of his character of service on or about 27 June 1988. After careful consideration, the Board determined the applicant's characterization of service was both

proper and equitable and therefore denied changing the character and/or reason for his discharge.

14. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200, Chapter 14, for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

15. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, 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.

2. A majority of the Board found insufficient evidence of in-service mitigating factors and noted 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, a majority of the Board determined the character of service the applicant received upon separation was not in error or unjust.

3. The member in the minority considered the nature of the applicant's misconduct and found relief is warranted. The member in the minority determined the applicant's character of service should be changed to honorable.

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.

12/19/2024

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. AR 635-200, in effect at the time, set 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 Soldier'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 used for 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.

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.

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//