

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 May 2024

DOCKET NUMBER: AR20230011089

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) characterization of service to honorable and a hearing before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 7 April 1987
- Resume, undated
- Master's Degree Diploma, 31 August 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 he has led an honorable life since his discharge from the Army. He immediately obtained employment and promotions and changed employment for better opportunities. He attended night school while working full time, eventually earning his associate and bachelor's degrees, and master's degree in business administration in 2003. He has worked on two large Department of Defense projects in 2008 and 2017, passing all necessary background checks. He is [REDACTED], has been married since [REDACTED], is in good health, and has a healthy retirement plan. He also volunteers for Meals on Wheels, is a fourth-degree member of the Knights of Columbus Men's Catholic Fraternal Organization, has no criminal record, and is not an alcoholic or drug abuser. Given the evidence he has presented showing that he has conducted himself honorably since his discharge, he humbly asks the Board to grant him relief.
3. The applicant enlisted in the Regular Army on 2 October 1984, for 3 years. The highest rank/grade he held was private first class/E-3.
4. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice, on three occasions:

a. On 2 December 1986, for twice disobeying a lawful order from a noncommissioned officer and for being disrespectful in language and deportment toward a noncommissioned officer on or about 8 November 1986. His punishment was reduction to private/E-2, forfeiture of \$167.00 pay for one month, 14 days extra duty, and 14 days restriction.

b. On 9 February 1987, for stealing property from the Army Air Force Exchange Service (AAFES) of some value less than \$50.00 and for unlawfully entering an AFFES store with the intent to commit larceny on or about 6 November 1986. His punishment was reduction to private/E-1, forfeiture of \$250.00 pay per month for two months, 45 days extra duty, and 45 days restriction.

c. On 27 February 1987, for leaving his appointed place of duty without authority on or about 5 February 1987. His punishment was forfeiture of \$167.00 pay for one month, 14 days extra duty, and 14 days restriction.

5. On 23 February 1987 and 5 March 1987, the applicant underwent a complete mental status evaluation and medical examination as part of his consideration for discharge due to his misconduct. His mental status evaluation noted he was mentally responsible, had the mental capacity to understand and participate in the proceedings, had no gross distortions in his psychological functioning, had no suicidal ideation, and was cleared for any administrative action deemed appropriate by his command.

6. On 11 March 1987, the applicant's immediate commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14 (Separation for Misconduct), paragraph 14-12c for commission of a serious offense. The commander noted as the specific reasons, the applicant's commission of a serious offense (larceny) and two other acts of misconduct.

7. On the same date, the applicant acknowledged receipt of his commander's notification. He understood if he was issued a general discharge, he may encounter substantial prejudice in civilian life. He waived his right to consult with counsel and elected to submit statements in his own behalf. However, statements if submitted are not available in the record.

8. The applicant's chain of command recommended the applicant's separation from the service, under the provisions of Army Regulation 635-200, paragraph 14-12c, and recommended the issuance of a general discharge.

9. On 25 March 1987, the separation authority approved the recommended discharge and directed the issuance of a General Discharge Certificate.

10. The applicant was discharged accordingly on 7 April 1987, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of misconduct-commission of a serious offense, with a under honorable conditions (general) characterization of service in the grade of E-1. He received a separation code of "JKQ" and reentry code of "RE-3" and "3C." He was credited with 2 years, 6 months, and 6 days of net active service with 1 year and 2 days of foreign service during the period covered.

11. The applicant provides his Master's Degree Diploma and job resume showing his qualifications, experience, training, education, professional affiliations, and security clearances held. These documents are available in their entirety for the Board's review within the supporting documents.

12. The applicant petitioned the Army Discharge Review Board (ADRB) for upgrade of his service characterization. On 31 July 1997, after careful consideration the ADRB determined he was properly and equitably discharged. However, during the Board's review they determined that the applicant's narrative reason for separation should be change from "misconduct-commission of a serious offense" to "Misconduct." His original DD Form 214 was voided, and he was issued a new DD Form 214 reflecting the correction effective 3 February 1997.

13. Regulatory guidance in effect at the time provided a discharge under other than honorable conditions was normally considered appropriate for Soldier's discharged under the provisions of Army Regulation 635-200, Chapter 14. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

14. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. 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.

3. A majority of the Board found the evidence of post-service achievements provided by the applicant sufficient to support clemency. Based on a preponderance of the evidence, a majority of the Board determine the applicant's character of service should be changed to honorable.

4. The member in the minority found insufficient evidence of in-service mitigating factors and noted the serious nature of the applicant's misconduct. Based on a preponderance of the evidence, the member in the minority 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 Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show his character of service as honorable.

9/20/2024

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 15-185 (ABCMR) states applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
3. 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. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was 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.
 - b. 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.
 - c. 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.
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 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//