

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 May 2024

DOCKET NUMBER: AR20230011436

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

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 10 July 2023
- official transcript, 10 October 2022
- officer history, from 12 May 2010 to present

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, while serving he made immature decisions due to excessive alcohol use. His time in service was mostly of the Army standards and he was awarded the Army Achievement Medal. Since his discharge he has become a model citizen and serves as a law enforcement officer, in the rank of Captain. He graduated Summa Cum Laude and earned his bachelor's degree in criminal justice. His under honorable conditions (general) discharge is prohibiting him from progressing further in his law enforcement career.
3. The applicant references award of the Army Achievement Medal; however, his record is void of his receipt of this award.
4. The applicant enlisted in the Regular Army on 26 July 1983 for a period of 3 years. He was awarded the military occupational specialty of 95B (Military Police) and the highest rank he attained was private first class/E-3.

5. A DA Form 268 (Report for Suspension of Favorable Personnel Actions) dated 4 November 1985 shows the applicant entered into the Army Weight Control program with an effective date of 28 October 1985.

6. The applicant underwent medical evaluation on 10 January 1986. The relevant DA Form 3822-R (Report of Mental Status Evaluation) shows the psychologist's opinion was the applicant was mentally responsible and able to under and participate in the proceedings. Additional remarks state:

a. The applicant was seen per his command for an evaluation due to problems, being overweight, writing numerous bad checks, and engaging in a fray at the Non-Commissioned Officer's Club.

b. While in session, the applicant discussed wanting to remain in the Army; however, the psychologist states the applicant appeared to be immature and impulsive.

c. The applicant was suggested as having a high probability of alcohol or substance abuse with a tendency to become involved in multiple activities but able to complete few tasks. Manic behavior was suggested and substance abuse profile with hyper manic behavior.

d. The applicant was cleared for administrative action as deemed appropriate by his command.

7. The applicant's commander notified him on 17 January 1986 of his intent to initiate administrative separation action under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13, by reason of unsatisfactory performance. The applicant's commander advised him of his rights and the applicant acknowledged receipt of the notification on 22 January 1986.

8. On 22 January 1986, the applicant acknowledged he was advised by consulting counsel of the basis for the contemplated action to separate him for unsatisfactory performance under AR 635-200, Chapter 13, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights.

a. He elected to submit a statement in his own behalf; however, his record is void of this statement.

b. He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him.

c. He further understood he would be ineligible for enlistment for a period of 2 years after discharge.

9. The applicant's immediate commander formally recommended his separation under the provisions of AR 635-200, Chapter 13. The commander noted the applicant as being an unsatisfactory performer. Stating the applicant had repeatedly demonstrated an apathetic attitude and overall immaturity, especially in the area of the Army's weight control program and his financial responsibilities. He had exhibited problems in his off-duty conduct, especially with alcohol related incidents and had been given ample opportunities to correct himself but had failed to do so.

10. On 10 February 1986, the separation authority approved the recommendation for discharge under the provisions of AR 635-200, Chapter 13, waived the rehabilitative transfer requirement, and directed the issuance of a DD Form 257A (General Discharge Certificate).

11. The applicant was discharged 13 February 1986, under the provisions of AR 635-200, Chapter 13, by reason of unsatisfactory performance, 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), with separation code JHJ and reentry code RE-3. He was credited with 2 years, 6 months, and 18 days of net active service. He was awarded or authorized the Army Service Ribbon and the Overseas Service Ribbon.

12. The applicant provides his official transcript showing he earned his Bachelor of Science in Criminal Justice degree with his honors as Summa Cum Laude. Also, his officer history with his employment starting on 12 May 2010 until present showing he has taken and passed numerous training courses.

13. Soldiers may be separated under the provision of AR 635-200, Chapter 13 when it is determined that they are unqualified for further military service because of unsatisfactory performance.

14. 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. 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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of

the applicant’s petition and available military records, the Board found insufficient evidence of in-service mitigation to overcome his unsatisfactory performance. Evidence shows the applicant had exhibited problems in his off-duty conduct, especially with alcohol related incidents and had been given ample opportunities to correct himself but had failed to do so. The Board noted the applicant was discharged for unsatisfactory performance and was provided an under honorable conditions (General) characterization of service.

2. The Board applauds the applicant’s post service accomplishments of receiving his bachelor’s degree and becoming a model citizen while serving as a law enforcement officer, in the rank of Captain since his discharge. However, the Board found the applicant’s achievements noteworthy but determined there was insufficient evidence to overcome his misconduct. 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. Therefore, 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.

[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 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 sets forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 13 of this regulation provides for separation due to unsatisfactory performance when, in the commander's judgment, the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.
 - 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.

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//