

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 28 June 2024

DOCKET NUMBER: AR20230011757

APPLICANT REQUESTS: upgrade his under honorable conditions (General) discharge.

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)
- Standard Form (SF Form) 180 (Request Pertaining to Military Records), 20 October 2021
- National Personnel Records Center (NPRC) Letter, 25 July 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 he lives in Las Vegas, NV, which is a state that requires a discharge to be characterized as honorable instead of under honorable conditions. He would like for the change made to his discharge for the Department of Motor Vehicles (DMV) and for tax purposes.
3. The applicant provides:
 - a. SF Form 180, shows the applicant requested his official military personnel file (OMPF) and his medical records from the National Archives and Records Administration (NARA) on 20 October 2021.
 - b. On 25 July 2023, NPRC issued a letter advising the applicant that NARA had no authority to review and approve amendments or corrections to military records. They further explained they were forwarding his DD Form 293 to the Army Review Boards Agency (ARBA), and that he should expect to hear from them.
4. The applicant's service record shows the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the United States) he enlisted in the Regular Army on 6 April 1982.

b. DA Forms 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) reflect the applicant received the following non-judicial punishments (NJP) under the provisions of Article 15, UCMJ:

(1) On 4 April 1983, Violations of Article 92, UCMJ for: Wrongfully purchasing controlled items in excess of the prescribed limits. He was found guilty and did not appeal.

(2) On 18 April 1983, Violations of Article 92, UCMJ for: Wrongfully purchasing controlled items in excess of the prescribed limits, for wrongfully purchasing duty-free items in excessive quantities and for wrongfully transferring duty-free goods to unauthorized personnel.

(3) On 10 August 1983, Violation of Article 107 for signing an official document with the intent to deceive, and Violation of Article 92, UCMJ for wrongfully purchasing controlled items in excess of the prescribed monthly dollar limits.

c. DA Forms 4856 (Developmental Counseling Form) show he was counseled on:

- 5 April 1984 for being absent from the place of duty
- 12 June 1984 for failure to wear the proper uniform and for displaying poor professionalism and bad attitude
- 15 June 1984 for failing to qualify in his military occupational specialty (MOS)

d. DA Form 2627, dated 5 September 1984 shows he received NJP under the provisions of Article 15, UCMJ for disobeying a noncommissioned officer, a Violation of Article 91. His punishment included reduction in rank to private (PVT).

e. DA Form 4856, dated 13 March 1985 shows he was counseled on the Chapter 14 proceedings that had been initiated against him.

f. DA Form 3822-R (Report of Mental Status Evaluation), dated 27 March 1985, shows he underwent a mental status evaluation. The report reflects he presented no history of mental illness, and he was psychiatrically cleared for any administrative action deemed appropriate by the command. He had the mental capacity to understand and participate in board proceedings and was mentally responsible. He met retention requirements of AR 40-501 (Standards of Medical Fitness), Chapter 3; and further show the following in remarks:

- Had normal behavior
- He was fully alert
- He was fully oriented
- His mood or affect was unremarkable
- His thinking process was clear
- His thought content was normal
- His memory was good

g. On 27 June 1985, his commanding officer initiated separation under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, paragraph 14-12a (Misconduct for minor disciplinary infractions). After consulting with legal counsel for his separation action under and its effects of the rights available to him, and the effect of any action taken by him in waiving his rights. He further acknowledged:

- he could consult with consulting counsel as his military counsel and/or civilian counsel at no expense to the government
- he was advised he could submit any statements he desired in his own behalf
- he had not been subjected to coercion with respect to his request for discharge and had been advised of the implications that were attached to it
- he could be ineligible for many, or all benefits administered by the VA
- he could be deprived of many, or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he could expect to encounter substantial prejudice in civilian life by reason of a general under honorable conditions discharge

h. On 9 July 1985, the battalion commander recommended that the applicant be discharged under the provisions of AR 635-200, Chapter 14.

i. On 12 July 1985 the separation authority directed that the applicant be separated from the Army with a characterization of General Under Honorable Conditions and will not be transferred to Individual Ready Reserve (IRR).

j. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 24 July 1985 with an under honorable conditions (General) characterization of service, due to misconduct – minor disciplinary infractions, pursuant to Army Regulation 635-200, Chapter 14-12a. He received a separation code of “JKN” and a reentry code of “3/3C”. He completed 3 years, 3 months, and 19 days of active service.

5. There is no indication the applicant petitioned the Army Discharge Review Board for review of his discharge within that boards 15-year statute of limitations.
6. By regulation, Soldiers are subject to separation under the provisions of paragraph 14 of AR 635-200 for misconduct. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.
7. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for misconduct, minor disciplinary infractions with the commander citing failing to obey lawful orders from a noncommissioned officer, failing to go to his appointed places of duty, making a false official statement, and sleeping on duty. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board considered the applicant's remark that his request for tax purposes in his state; however, also noted he provided no documentation to support his request, including post-service achievements or letters of support toward clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
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:	:	:	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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

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. Chapter 14-12a 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).

3. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

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/NRs) 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. 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 based on 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. 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//