

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 May 2024

DOCKET NUMBER: AR20230011853

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under honorable conditions (General) discharge.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- Self-Authored Statement
- Extract from the Record of Proceedings (ROP) for Army Board for Correction of Military Records (ABCMR) Docket Number AR20220001965

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20050016400 on 31 May 2006 and Docket Number AR20100020189 on 16 February 2011 and Docket Number AR20220001965 on 5 October 2022.

2. In a new argument, the applicant states he understands the reasoning behind the decision not to modify his records. However, his contention is not that he did not misbehave but rather that his misbehavior were bits and pieces of a whole and not individual events as documented. He contends they could have been easily mitigated and ceased had he been given appropriate structural guidance for the whole event (assault).

a. Everything listed in the Board's ROP for Docket Number 20220001965 on page 2, paragraph 5, supports his statement and this claim. Please refer to where it states "The applicant was formally counseled on five separate occasions " and please focus on the dates "11 November 1994 to 15 February 1995"; a period of 3 months. If we were to assume that everything listed on page 2, paragraph 5 is true, then we would have to assume that for those three months, he was engaging in adverse behavior continuously in the midst of being relieved from duty, placed on lockdown in barracks, and all directly in the face of his leaders and Army Command. Would this even be possible in the Military Police (MP) segment without ending up in a prison for his own safety and of those around him? Or would the MP segment continue to allow him to commit chaos for a period of three months? The grouping of the dates and claims allude

to mishandling and were fruits or poisons from one tree (assault) that were expanded to create justification for his separation.

b. In such a life-altering event as a discharge, he was not provided legal representation to explain the potential adverse life outcomes of such an event. What he was given was a mental evaluation to determine if he understood his actions. It was documented that he understood his actions, but they offered him no legal representation to explain how his actions could impact his record in the long term. Would someone risk a lifetime record for an assault? He is not debating poor behavior on his behalf, what he is debating is the expansion of that major assault event into many smaller pieces to create the appearance of a pattern of misconduct.

3. On 12 March 1993, the applicant enlisted in the Regular Army.
4. The applicant's record contains developmental counseling forms between 30 August 1993 and 22 November 1994; available to the Board in their entirety.
5. Four DA Forms 2823 (Sworn Statement), dated 5 December 1994, show the applicant was involved in a domestic violence incident with his wife earlier that morning. He also refused to follow direct orders and was disrespectful in language to three superior noncommissioned officers (NCOs). He was counseled regarding the incidents.
6. The applicant accepted nonjudicial punishment on 14 December 1994, for assaulting another Soldier by striking him in the face with a closed fist, on 16 October 1994. His punishment included reduction from private first class to private (PV2)/E-2.
7. On 20 December 1994, a Social Worker with the Family Advocacy Program informed the applicant's commander, in part, that the Family Advocacy Case Review Committee met on 15 December 1994 to review an alleged spouse abuse referral involving the applicant and his wife. The committee substantiated they were both victims of spouse abuse. It was recommended that they undergo couple counseling with a chaplain who would coordinate with Mental Health if needed.
8. A DA Form 3822-R (Report of Mental Status Evaluation) shows the applicant underwent a mental status evaluation on 19 January 1995. It was noted that he had normal behavior, was fully alert and oriented, and had clear thought process and normal thought content. The evaluating medical professional determined he had the mental capacity to understand and participate in any administrative proceedings and he was psychiatrically cleared for any administrative action deemed appropriate by his command.
9. On 10 February 1995, the applicant's immediate commander notified him of his intent to initiate separation actions against him under the provisions of Army Regulation

635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c for commission of a serious offense. The specific reason for the proposed separation was the applicant being counseled on numerous occasions for violating orders, disrespect, and assault. He noted that on 14 December 1994, the applicant received nonjudicial punishment for assault consummated by battery.

10. On 15 February 1995, the applicant was counseled regarding an alcohol-related verbal altercation he was involved in on 2 February 1995. He was advised that although he was pending separation, he was still in the Army and was required to behave accordingly so he could get out and rejoin his family as soon as possible. He was further advised to stay out of off post clubs/bars and to monitor his alcohol consumption.

11. On 16 February 1995, the applicant rendered his election of rights wherein he acknowledged he was afforded the opportunity to consult with counsel regarding his proposed separation under the provisions of Army Regulation 635-200, paragraph 14-12c. He was advised of the basis for the contemplated action to separate him and of the rights available to him. He elected to submit a statement in his own behalf, in which he stated that although he was involved in an off post assault he was unjustly given nonjudicial punishment which led to his reduction. His records did not list all his accomplishments or all the missions in which he participated. He had learned many things during his military service. The main reason he agreed to the separation was to avoid further punishment.

12. On 16 February 1995, the applicant's immediate commander formally recommended the applicant's separation, under the provisions of Army Regulation 635-200, paragraph 14-12c, due to commission of a serious offense. The separation authority approved the recommended discharge and directed the applicant be issued a general, under honorable conditions discharge.

13. He was discharged on 28 February 1995 under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of misconduct with Separation Program Designator (SPD) code "JKA" and Reentry Eligibility code "3." His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his service was characterized as under honorable conditions (General). He completed 1 year, 11 months, and 19 days of active service.

14. The ABCMR rendered a decision in:

- Docket Number AR20050016400 on 31 May 2006. The Board determined his assertion that his rights were violated based on double jeopardy were considered; however, there was insufficient evidence to support the claim; the Board denied relief

- Docket Number AR20100020189 on 16 February 2011. The Board determined he was properly discharged and denied relief
- Docket Number AR20220001965 on 5 October 2022. The Board determined based on the totality of the misconduct and in the absence of post-service achievements, the characterization of service he received upon discharge was not in error or unjust

15. Regulatory guidance provides when an individual is discharged under the provisions of Army Regulation 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

16. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

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 DoD 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 with his commander citing violating orders, disrespect, and assault, including nonjudicial punishment for assault consummated by battery. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support 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

:	:	:	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 amendment of the ABCMR decision rendered in Docket Numbers AR20050016400 on 31 May 2006, AR20100020189 on 16 February 2011, or AR20220001965 on 5 October 2022.

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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. Army Regulation 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body.

2. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b states 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 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. Army Regulation 635-5-1 (SPD Codes) implements the specific authorities and reasons for separating Soldiers from active duty. It also prescribes when to enter SPD codes on the DD Form 214.

a. Paragraph 2-1 provides that SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of Department of Defense and the Military Services to assist in the collection and analysis of separation data. This analysis may, in turn, influence changes in separation policy. SPD codes are not intended to stigmatize an individual in any manner.

b. Table 2-3 provides the SPDs and narrative reasons for separation that are applicable to enlisted personnel. It shows, in part, JKA is the appropriate SPD to assign to enlisted Soldiers who are involuntarily discharged under the provisions of Army Regulation 635-200, Chapter 14-12b, due to Pattern of Misconduct. SPD JKQ is the appropriate code to assign to an enlisted Soldier who is involuntarily discharged under the provisions of Army Regulation 635-200, Chapter 14-12c, due to Misconduct (Serious Offense).

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//