

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2024

DOCKET NUMBER: AR20230011990

APPLICANT REQUESTS:

- in effect, an upgrade of his general, under honorable conditions discharge to honorable
- a video and/or telephonic appearance before the Board

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 is requesting an upgrade of his general, under honorable conditions discharge to honorable to facilitate his claim for benefits. The applicant contends that he should have received a medical separation and an honorable discharge due to his medical conditions at the time of separation from the Army.
3. The applicant's service record shows:
 - a. He enlisted in the Regular Army on 22 July 1987.
 - b. On 16 September 1988, he accepted nonjudicial punishment for one specification of wrongfully using cocaine between on or about 14 August 1988 and 24 August 1988. His punishment included reduction to the rank of private/E-1.
 - c. On 21 September 1988, the applicant's immediate commander notified the applicant of his intent to initiate separation actions against him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13, for unsatisfactory performance. The specific reasons cited were the applicant's positive

uranalysis, 19 bad checks written in excess of \$1,750.00, and failure to be at his appointed place of duty. The applicant acknowledged receipt on 30 September 1988.

d. After consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he is ineligible to apply for enlistment in the U.S. Army for a period of two years after discharge
- statement on his own behalf were submitted; however, not included in the service record

e. The service record includes the applicant's medical examinations, dated 23 September 1988, for the purpose of administrative separation which indicated he was generally in good health. The applicant was marked qualified for separation.

- Standard Form (SF) 88 (Report of Medical Examination)
- SF 93 (Report of Medical History)

f. The service record is void of a mental evaluation.

g. On 3 October 1988, the immediate commander initiated separation action against the applicant for unsatisfactory performance. He recommended that his period of service be characterized as general, under honorable conditions.

h. On 14 October 1988, the separation authority approved the discharge recommendation for separation under the provisions of AR 635-200, Chapter 13. He would be issued a General Discharge Certificate.

i. On 18 October 1988, he was discharged from active duty with a general, under honorable conditions discharge. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 2 months, and 27 days of active service with no lost time. The narrative reason for separation listed as "Unsatisfactory Performance."

4. On 3 October 2001, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

5. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

6. By regulation (AR 635-200), a member may be separated per this chapter when it is determined that he or she is unqualified for further military service because of unsatisfactory performance.

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.

8. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR) (AHLTA and MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 18 October 1988 discharge characterized as under honorable conditions (general) and, in essence, a referral to the Disability evaluation System (DES). He states:

"I was supposed to be released with honorable discharge, with medical discharge. I had medical conditions upon leaving the Army."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 22 July 1987 and was discharged under honorable conditions (general) on 18 October 1988 under the separation authority provided by chapter 13 of AR 635-200, Personnel Separations – Enlisted Personnel (22 January 1988 Separation for Unsatisfactory Performance).

d. No medical documentation was submitted with the application and because of the period of service under consideration, there are no encounters in the EMR.

e. On 21 September 1988, his company commander informed him of the initiation of action to separate the applicant under provisions provided in chapter 13 of AR 635-200:

“The reasons for my proposed action are: You had a positive urinalysis for cocaine on 24 Aug 88. You wrote 19 bad checks in excess of \$1750.00. You failed to be at your appointed place of duty on 2 May 88 at 0400 and 0845. You failed to be on time for a 0600 formation on 6 Sep 88. You were notified on a counseling statement on 12 April 88 that you would be subject to discharge under the provisions of Chapter 13, AR 635-200 if your poor job performance kept up.

f. The applicant underwent a pre-separation medical examination on 23 September 1988. On his Report of Medical History, the applicant wrote “I’m in good health except for my face itching. Mycelex [ointment] is the medicine I was given as well as Benadryl.” On the accompanying Report of Medical Examination, the physician documented a normal examination except for a mild skin condition (tinea versicolor) and found the applicant qualified for separation.

g. Review of his records in JLV shows no diagnosed medical conditions but does receive humanitarian emergency care as a non-service-connected Veteran.

h. There is no evidence the applicant had a medical condition which would have contributed to or would now mitigate the UCMJ violations which resulted in his request for discharge. Furthermore, there is no evidence the applicant had any medical condition prior to his discharge which would have failed the medical retention standards of chapter 3, AR 40-501, and would therefore have been a cause for referral to the Disability Evaluation System.

i. It is the opinion of the ARBA medical advisor that neither a discharge upgrade nor referral of his case to the Disability Evaluation System is warranted.

j. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct and the reason for his

separation. The Board considered the applicant's health claim and the review and conclusions of the ARBA Medical Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by a medical condition and there being no evidence of a medical condition that would have been a basis for referring him to the Disability Evaluation System. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation and the reason for his separation were 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 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. Army Regulation 15-185 (ABCMR) 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, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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 (Personnel Separations – Enlisted Personnel), in effect at the time, sets the criteria governing the issuance of honorable, General, and Under Other Than Honorable Conditions Discharge Certificates.

a. An honorable discharge is a separation with honor. Issuance of an Honorable Discharge Certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or current period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude.

b. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. A member may be separated per chapter 13 when it is determined that he or she is unqualified for further military service because of unsatisfactory performance. Commanders will separate a member for unsatisfactory performance when it is clearly established that:

(1) In the commander's judgement, the member will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier, or

(2) The seriousness of the circumstances is such that the member's retention would have an adverse impact on military discipline, good order, and morale, and

(3) It is likely that the member will be a disruptive influence in present or future duty assignments, and

(4) It is likely that the circumstances forming the basis for initiation of separation proceedings will continue or recur, and

(5) The ability of the member to perform duties effectively in the future, including potential for advancement or leadership, is unlikely, and

(6) The member meets retention medical standards.

4. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, 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.

5. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including

summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//