

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 June 2024

DOCKET NUMBER: AR20230012146

APPLICANT REQUESTS: reconsideration of his prior request for an upgrade of his under honorable conditions (General) discharge and a change in the narrative reason for separation with corresponding separation code.

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

- DD Form 293 (Application for the Review of Discharge)
- Letter to the Department of Veterans Affairs (VA)
- Commonwealth of Kentucky Police Citation
- Conversation Communication
- Documents from Service Record
- Army Discharge Review Board (ADRB) Decision – AR20050017655
- Two Army Board for Correction of Military Records (ABCMR) Decisions – AR20150018899 and AR20190003590

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's cases by the ABCMR in Docket Numbers AR20150018899 on 28 April 2017 and AR20190003590 on 10 August 2020.

2. The applicant states the character of separation is incorrect. The Board is aware the chapter is incorrect; however, "claims" that the event which led to the separation falls in line and is equitable. He believes the separation includes the police report which clearly contradicts Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c.

3. The applicant provides:

a. A letter to the VA wherein the applicant pleads his case for a discharge upgrade stating the assault did not qualify as an event for separation under Chapter 14-12c. Paragraph 14-12c involves the issue of a Soldier going absent without leave, dealing with drugs and/or alcohol abuse, or sexual offenses. The event that occurred on 31 December 2004, was a domestic violence issue that he does not believe falls under

the purview of Chapter 14-12c. The applicant provides additional details of the events leading to the domestic assault and other incidents of domestic assault prior to the marriage where he was warned against getting married by his leadership. The full statement is available for review by the Board.

b. As new evidence, the applicant presents text messages from 19-20 September 2014, which the applicant states are from his ex-wife. The text messages offer an apology and further notes, "you did everything in your power to be a great husband... I never got to thank you... wholeheartedly apologize for all the pain I've caused you; I am sorry." The response acknowledges both were young and imperfect, also apologizes for shortcomings and offers forgiveness.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 25 July 2002.

b. He served in Korea from 18 March 2003 to 17 April 2004, with his follow on assignment at Fort Campbell, KY.

c. A citation shows on 31 December 2004, officers responded to a disturbance and upon arrival they made contact with the applicant and his spouse. Both admitted that a verbal argument had started, and the argument turned violent when the applicant punched his wife in the mouth giving her a small cut and swelling. The applicant's wife stated she was pushed to the ground and had to bite the applicant to get him off of her. The applicant did have bite marks on his left shoulder. The applicant is listed as the sole offender on the citation.

d. On 4 January 2005, an excerpt of a court docket shows the applicant was charged with assault, 4th degree domestic violence minor injury and was sentenced to 30 days confinement with 4 days credit for time served and 26 days suspended, 2 years' probation, to complete a domestic violence course/training, and no contact order and no criminal contact with the victim.

e. On 2 March 2005, a DA Form 3822-R (Report of Mental Status Evaluation) shows the applicant underwent a mental status evaluation for the purpose of separation. The evaluation indicated the applicant demonstrated an understanding of his current situation and he was psychologically cleared for any administrative action deemed appropriate by his chain of command.

f. A DD Form 2808 (Report of Medical Examination), dated 6 April 2005, shows the applicant was undergoing an examination for the purpose of separation. His clinical evaluation was marked normal and in block 74a (Examinee/Applicant) he was marked qualified for service and separation.

g. The applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 for commission of a serious offense. The specific reason for his proposed recommendation was for his domestic violence, assault consummated by battery. He acknowledged receipt on 13 April 2005.

h. On 26 April 2005, after consulting 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 ADRB or the ABCMR for upgrading
- he will be ineligible to apply for enlistment in the U.S. Army for a period of 2 year following discharge
- he elected not to submit matters

i. On 26 April 2005, the immediate commander-initiated separation action against the applicant for commission of a serious offense. He recommended that his period of service be characterized as under honorable conditions (General).

j. On 3 May 2005, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation, under the provisions of Chapter 14, AR 635-200, paragraph 14-12c for commission of a serious offense. He would be issued a general, under honorable conditions characterization of service.

k. On 16 May 2005, he was discharged from active duty with an under honorable conditions (General) characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years, 9 months, and 22 days of active service. He was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct," with reentry code 3. It also shows he was awarded or authorized:

- Global War on Terrorism Service Medal
- National Defense Service Medal
- Korea Defense Service Medal
- Army Service Ribbon

5. On 19 October 2006, the ADRB reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. On 27 April 2017, the ABCMR rendered a decision in Docket Number AR20150018899. The Board determined the applicant's administrative discharge was accomplished in compliance with applicable regulations with no indication of procedural errors which would have jeopardized his rights. The applicant appears to argue that because his offense did not involve drugs or alcohol, he should not have been considered for separation. While it appears he committed one act of misconduct, his actions were of such a degree that by regulation it required his separation. A Soldier who cannot maintain his security clearance and cannot use military weapons under the Lautenberg Amendment based on conviction of domestic violence warrants separation.

7. On 10 October 2019, the ABCMR rendered a decision in Docket Number AR20190003590. The Board found no error or injustice in the applicant's general discharge. The Board agree that the applicant's general discharge characterization is appropriate and equitable considering his misconduct and record of service. Therefore, the Board determined the overall merits of the case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20150018899 on 27 April 2017.

8. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed. Paragraph 14-12c states Soldiers are subject to action per this section for commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

9. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

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 her characterization of service. Upon review of the applicant's petition and available military record, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of domestic violence. The applicant provided no post service achievements or character letters of support for the Board to weight a clemency determination.

2. The Board noted the applicant was discharged for misconduct and was provided an under honorable conditions (General) characterization of service. 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. The Board determined under liberal consideration changes to the applicant's narrative reason are not warranted. Furthermore, the Board determined there was insufficient evidence of an error or injustice which would warrant a change in the separation code. Therefore, the Board found reversal of the previous Board determination is without merit and denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20150018899 on 28 April 2017 and AR20190003590 on 10 August 2020.

[REDACTED]

[REDACTED]

[REDACTED]

[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. Army Regulation 635-5 (Separations Documents) in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

2. Army Regulation 635-5-1 (Separation Program Designation Codes), in effect at the time, provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in Block 28 of the DD Form 214 exactly as listed in the regulation. The separation code JKQ lists the narrative reason for separation as "Misconduct," under the provisions of AR 635-200, chapter 14-12c.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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 (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed. Paragraph 14-12c states Soldiers are subject to action per this section for commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

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.

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 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.

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//