

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 July 2024

DOCKET NUMBER: AR20230012214

APPLICANT REQUESTS: an upgrade of his general, under honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Two DD Forms 214 (Certificate of Release or Discharge from Active Duty)

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 is seeking to have his discharge upgraded from a general to honorable. He further states he is getting older and reflecting on all the mistakes and bad decisions he made. He realizes it is time for him to correct those mistakes, bad decisions from his past, if he can and make peace with those, he is not able to. The applicants noted he is in a space of rebuilding and trying to elevate and progress in life. He believes that if his discharge is upgraded to honorable, it would be more appealing and beneficial, especially at this juncture of his life.
3. The applicant provides two DD Forms 214, wherein one is not legible and the other is a record of his discharge from active duty.
4. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 9 October 2001.
 - b. On 10 December 2002, he accepted nonjudicial punishment for one specification, use of disrespectful language towards a noncommissioned officer and one specification of driving while under the influence of alcohol. The applicant submitted an appeal.

Subsequently, on 12 December 2002 the applicant's request for appeal was denied. His punishment included reduction to private (PVT)/E-2.

c. On 5 December 2003, he accepted nonjudicial punishment for one specification, use of disrespectful language towards a superior commissioned officer and one specification of willfully disobeying a lawful order received from a senior noncommissioned officer. His punishment included reduction to private (PVT)/E-2.

d. On 20 January 2004, vacation of suspension was imposed. The forfeiture of \$250.00 per month for two months, 14 days restriction and 14 days extra duty was enforced for one specification of failure to report to an appointed place of duty on 5 December 2003.

e. The service record includes the applicant's medical evaluations, dated 25 May 2004, for the purpose of separation which indicated he was generally in fair health. The applicant was marked qualified for separation.

- DD Form 2807 (Report of Medical History)
- DD Form 2808 (Report of Medical Examination)

f. On 2 June 2004, the applicant underwent a mental evaluation. The physician noted he is mentally responsible and has the mental capacity to understand and to participate in administrative proceedings.

g. The applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 14, Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) for patterns of misconduct. The specific reasons for his proposed recommendation was based upon receipt of a Field Grade Article 15 for disrespecting a noncommissioned officer, physically controlling a vehicle while drunk, disrespectful in deportment towards superior noncommissioned officer, receipt of another Field Grade Article 15 for disrespecting a superior commissioned officer, disobeying a lawful order received from a superior noncommissioned officer and his failure to be at his appointed place of duty and several notable counseling's. The applicant acknowledged receipt of the notification of separation action on the same day.

h. On 15 June 2004, consult 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 discharge under other than 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 Army for 2 years after discharge

i. On 19 June 2004, the immediate commander-initiated separation action against the applicant for patterns of misconduct. He recommended that his period of service be characterized as general, under honorable conditions. The available service record is void the intermediate commander recommendations.

j. On 28 July 2004, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 14, AR 635-200, paragraph 14-12b for patterns of misconduct. He would be issued a general, under honorable conditions discharge.

k. On 4 August 2004, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years, 9 months, and 26 days of active service. He was assigned separation code JKA and the narrative reason for separation listed as "Misconduct." It also shows he was awarded or authorized:

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

5. On 28 April 2011, the applicant was notified 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.

6. By regulation (AR 635-5), 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.

7. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as patterns of 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.

8. 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:

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 determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of driving while under the influence of alcohol and disrespect towards a noncommissioned officer.

2. The Board noted the applicant provided no post service achievements or character letters of support for the Board to weigh a determination. The applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief. He 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. 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.



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 635-5 (Separation Documents) 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.
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. 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. 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.

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//