

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 July 2024

DOCKET NUMBER: AR20230012417

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (general) discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement

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:

a. He takes full responsibility for his actions during his service and understands that he made poor choices that warranted disciplinary action. It is with a sincere heart that he acknowledges the gravity of his decision, and he deeply regrets any negative impact that he may have had on the reputation of the Armed Forces. At the time of his regrettable choices, he was struggling with personal issues and failed to cope with them appropriately. He does not offer an excuse for his behavior but provides context for the circumstances that clouded his judgement and led to his actions. He has learned from his mistakes and has made considerable effort to address the root cause of his behavior.

b. He has worked tirelessly to rebuild his life following his discharge. He is employed in the public safety field where he has demonstrated a consistent track record of professionalism, reliability, and dedication to upholding the values and integrity of his service. His employment has provided him with an opportunity to contribute positively to society and has been a means of personal redemption. He has learned from his past

mistakes and has made significant strides in his personal growth and character development. While he cannot change the past, he is committed to living a life of honor, responsibility, and continue contributing to society. He humbly requests consideration of change in his discharge due to his outstanding citizenship and dedicated service in his current profession. The applicant identifies documents provided with his application; however, there were no additional attachments.

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

- a. He enlisted in the Regular Army on 11 September 2002.
- b. He served in Afghanistan from 31 March 2003 to 24 October 2003 and Iraq from 31 May 2004 to 31 May 2005.
- c. He accepted nonjudicial punishment on 17 March 2004 for one specification of wrongful use of cocaine. His punishment included reduction to the grade of private (PVT)/E-1.
- d. A DA Form 2627-1 (Summarized Record of Proceedings Under Article 15, Uniform Code of Military Justice) shows he accepted nonjudicial punishment on 11 July 2005 for one specification of wrongfully and falsely altering the date of birth on his identification card.
- e. He accepted nonjudicial punishment on 13 September 2005 for one specification of physically controlling a vehicle while the alcohol concentration on his breath was .08 grams or more of alcohol per 210 liters of breath, as shown by the chemical analysis. His punishment included reduction to PVT/E-1.
- f. On 29 September 2005, the applicant underwent a medical evaluation for the purpose of separation which indicated he was generally in good health. He was subsequently marked qualified for service, to include separation/chapter.
 - DD Form 2807-1 (Report of Medical History)
 - DD Form 2808 (Report of Medical Examination)
- g. A DA Form 3822-R (Report of Mental Status Evaluation), dated 29 September 2005, confirmed the applicant was command referred for a mental evaluation due to misconduct. The applicant was psychiatrically cleared for any administrative action deemed appropriate by the command.
- h. On 2 November 2005, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c for

commission of a serious offense. The reasons for his proposed action were his wrongful use of cocaine between 19 February 2004 and 23 February 2004, wrongfully altering the date of birth on his military identification card on or about 25 June 2005, and being in control of a passenger car while his alcohol concentration was .08 grams or more of alcohol per 210 liters of breath on or about 21 August 2005. He represented a command liability and impaired good order and discipline in the unit. The applicant acknowledged receipt of the notification of separation action on the same day.

i. On 2 November 2005, after declining 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 ADRB or the ABCMR for upgrading
- he will be ineligible to apply for enlistment in the U.S. Army for a period of 2 years following discharge
- he elected not to submit matters

j. 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 general, under honorable conditions. The intermediate commander recommended approval.

k. On 9 November 2005, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12c for commission of serious offense. He would be issued an under honorable conditions (general) discharge.

l. On 10 November 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 3 years and 2 months of active service. The narrative reason for separation listed as "Pattern of Misconduct." It also shows he was awarded or authorized:

- Army Commendation Medal
- Joint Service Achievement Medal
- National Defense Service Medal
- Army Service Ribbon
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal

4. On 7 September 2011, 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), 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.

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:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service to include deployment, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors. Other than his own statement, the applicant provided no evidence of post-service achievements, and he provided no letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was 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.

12/26/2024

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 (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//