

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 July 2024

DOCKET NUMBER: AR20230012446

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions 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)
- Character Letter

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 believes he was wrong for failing to be at his appointed place of duty at times, but also believes those mistakes should not be held against him for his entire life of not being an honorable veteran. As a young Soldier, he made several mistakes during his military service due to being immature and away from home for the first time. He would like his discharge to be upgraded in order to receive health care at his local Veterans Affairs (VA) hospital or clinic.
3. The applicant provides a character letter from his wife stating that she has known the applicant for over 12 years and that over the years he has become a great leader, husband, and provider. He has been very self-disciplined with being at work on time and an intelligent and skilled worker. The jobs he has worked for have recognized his outstanding work ethic and leadership skills, and as a result has taken on a supervisory role in less than 6 months. She additionally states how the applicant's leadership skills have helped their two sons become better athletes and students in school, as he is involved with their school and academic activities.
4. A review of the applicant's service record shows:

- a. He enlisted in the Regular Army on 28 March 2000.
  - b. On 7 June 2002, he reenlisted in the Regular Army.
  - c. On 14 November 2002, his immediate commander notified him of his intent to separate him in accordance with Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 14-12b, for a pattern of misconduct. The reason for his proposed action was based on the applicant wrongfully carrying an unregistered concealed weapon, driving with a suspended license, failure to pay debts, and numerous occasions of failure to report.
  - d. After waiving his right to consult with legal counsel, the applicant 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 an upgrade request
    - he will be ineligible to apply for enlistment in the U.S. Army for a period of two years following discharge
  - e. On 18 November 2002, through vocal order of the commanding officer (VOCO), the intermediate commander concurred with the immediate commander and recommended approval of discharge with an other than honorable conditions characterization of service.
  - f. On 22 November 2002, the separation authority directed approval of discharge under the provisions of Chapter 14, AR 635-200, issuance of an other than honorable discharge, reduction to the lowest enlisted grade, and barred the applicant from the Fort Stewart installation.
  - g. The applicant was discharged from active duty on 12 December 2002 with a narrative reason for separation listed as “misconduct” and an under other than honorable conditions characterization of service. He completed 2 years, 7 months, and 18 days of active service. He was awarded or authorized the Army Service Ribbon.
5. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.
6. By regulation, AR 635-200, in effect at the time, states 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.

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. 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 Department of Defense 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 a pattern of misconduct with the commander citing wrongfully carrying a concealed weapon, driving with a suspended license, failure to pay debts, and numerous failure to reports. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the statement provided by the applicant's spouse; however, did not find it compelling, by a preponderance of the evidence, that the applicant's characterization of service should be upgraded.

2. 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 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.

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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.

ADMINISTRATIVE NOTE:

A review of the applicant's service record indicates certain remarks were omitted from his DD Form 214. As a result, amend his DD Form 214 for the period ending 12 December 2002 to include in item 18 (Remarks): "CONTINUOUS HONORABLE ACTIVE SERVICE FROM 20000328 UNTIL 20020606."

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. AR 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. 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 635-5 (Separation 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.
4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), 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.
5. 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.

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//