

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 12 July 2024

DOCKET NUMBER: AR20230012809

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) characterization of service to honorable.

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 his actions were not a good impression of the discipline and honor he learned as a Soldier in the U.S. Army. He failed his family, his leadership, and the Army by not overcoming his bad habits. He should have used the resources available to him and put his command in a position to guide him through his tough times, with the possibility of having a positive outcome.
 - a. After his discharge, he stopped drinking and has been an active member in his church for over 25 years. He cooked for a rehabilitation center and drove waste trucks for over 20 years. He owned a transportation company and is now doing security work.
 - b. If his discharge is upgraded, he wants to apply for a better security position and become more financially stable. He also believes an upgrade of his discharge would look good on his wall of achievement.
3. The applicant enlisted in the Regular Army on 2 July 1982.
4. He accepted nonjudicial punishment (NJP), under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on 3 May 1989, for wrongfully consuming alcohol while on duty, on or about 30 March 1989. His punishment included reduction to the grade of E-4.

5. A memorandum from the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) Counselor, dated 5 February 1990, states, in effect, the applicant was enrolled in the program in Germany and Fort Leonard Wood for alcohol abuse. His behavior indicated he got very little or nothing out of multiple segments of the program. He was cited by the Family Advocacy Case Management Team (FACMT) for child/spouse abuse, with one substantiated charge for child abuse. He failed a command directed breathalyzer test, which was in direct violation of his treatment plan. His prognosis for recovery was determined to be poor.

6. On 8 February 1990, the applicant's immediate commander informed him that she was initiating actions to separate him from the Army under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 9, by reason of Army Drug and Alcohol Program failure, with the issuance of an under honorable conditions (general) characterization of service. As specific reasons for the separation action, the commander referenced his previous enrollment in Germany, poor prognosis for recovery, and positive breathalyzer test on 10 January 1990.

7. On the same date, the commander formally recommended that he be separated, prior to his expiration term of service, under the provisions of AR 635-200, Chapter 9, by reason of ADAPCP failure.

8. On 12 February 1990, the applicant acknowledged receipt of the notification and consulted with legal counsel.

a. He was advised of the basis for the contemplated separation action and its effects; of the rights available to him; and the effect of any action taken by him in waiving those rights. He waived consideration and a personal appearance before an administrative board; he requested consulting counsel; and he acknowledged understanding he may encounter substantial prejudice in civilian life if a under honorable conditions (general) discharge was issued to him.

b. In an attached statement in his own behalf, the applicant requested an honorable discharge, as he had seven and half years in the service and had never been to jail. He further stated he was conscientious about his job and performed all of his duties professionally. Most of all, he was a good Soldier.

9. The separation authority approved the recommended discharge on 14 February 1990 and directed the issuance of a General Discharge Certificate.

10. The applicant was discharged on 6 March 1990, under the provisions of AR 635-200, Chapter 9, by reason of alcohol abuse rehabilitation failure. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was characterized as under honorable conditions (general), with separation code JPD and

reentry code RE-3. He was credited with 7 years, 8 months, and 5 days of active service. He was awarded or authorized the following:

- Army Service Ribbon
- Marksman Marksmanship Qualification Badge with Rifle Bar (M16)
- Marksman Marksmanship Qualification Badge with Grenade Bar
- Overseas Service Ribbon (2nd award)
- Army Achievement Medal
- Army Good Conduct Medal (2nd award)
- Noncommissioned Officer Professional Development Ribbon

11. AR 635-200, Chapter 9 outlines the procedures for discharging Soldiers because of alcohol or other drug abuse. The service of Soldiers discharged under this chapter will be characterized as honorable or under honorable conditions (General) unless the Soldier was in an entry-level status.

12. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

BOARD DISCUSSION:

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 applicant was enrolled in the Army Substance Abuse Program and was cited for child/spouse abuse with one such charge being substantiated by the team for child abuse. Additionally, he was command directed to be administered a breathalyzer which registered a .12 rendering him legally intoxicated as a direct violation of his treatment plan. His commander declared him an alcohol rehabilitation failure and he was discharged from active duty due to alcohol rehabilitation failure with an under honorable conditions (General) discharge. The Board found no error or injustice in his separation processing. The applicant provided no evidence of post-service achievements or letters in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the characterization 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.

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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.

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 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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 Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 9 contained the authority and outlined the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who had been referred to the Alcohol and Drug Abuse Prevention and Control Program for alcohol/drug abuse could be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there was a lack of potential for continued Army service and rehabilitation efforts were no longer practical. Nothing in this chapter prevented separation of a Soldier who had been referred to such a program under any other provisions of this regulation. Initiation of separation proceedings was required for Soldiers designated as alcohol/drug rehabilitation failures. The service of Soldiers discharged under this chapter would be characterized as honorable or under honorable conditions (general) unless the Soldier was in an entry-level status.
3. 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/NR) 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 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.

//NOTHING FOLLOWS//