

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2024

DOCKET NUMBER: AR20230013176

APPLICANT REQUESTS: upgrade of his characterization of service and a more favorable narrative reason for separation.

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

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 17 November 2020

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, in effect, his military records will show he never received disciplinary infractions and was an exceptional Soldier, until he had a lapse of judgement in 2013. He believes one mistake should not define his entire military career.
3. The applicant enlisted in the Regular Army on 16 February 2006. He subsequently reenlisted on 18 June 2008 for a period of 6 years. He extended his enlistment on 26 August 2011, for an additional 3 months. He was awarded the military occupational specialty of 19K (M1 Armor Crewman) and the highest rank he attained was sergeant/E-5.
4. His Enlisted Record Brief shows he served in a designated imminent danger pay area, Iraq from 17 November 2009 to 4 August 2010.
5. The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing.
6. On 8 May 2013, a legal review was completed for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 14 (Separation for Misconduct), paragraph 14-

12c(2) (Acts or Patterns of Misconduct – Commission of a Serious offense), due to the applicant's abuse of illegal drugs. The Judge Advocate found the separation was legally sufficient and further stated the company and battalion commander both recommended the applicant receive a under honorable conditions (general) characterization of service.

7. On 10 May 2013, the separation authority directed the applicant be separated from the Army under the provisions of AR 635-200, Chapter 14. He further directed the applicant's service be characterized as under honorable conditions (general).

8. The applicant was discharged on 20 June 2013, under the provisions of AR 635-200, paragraph 14-12c(2), by reason of misconduct (drug abuse), in the grade of E-4. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his character of service was under honorable conditions (general) with separation code JKK and reentry code 4. He was credited with 7 years, 4 months, and 5 days of net active service with 8 months and 18 days of foreign service. He was awarded or authorized the following decorations, medals, badges, citations, and campaign medals:

- Army Commendation Medal (2nd award)
- Army Achievement Medal (5th award)
- Meritorious Unit Commendation
- Army Good Conduct Medal (2nd award)
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with Campaign Star
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon
- Sharpshooter Marksmanship Badge with Carbine Bar

9. The applicant petitioned the Army Discharge Review Board (ADRB) for upgrade of his characterization of service to fully honorable. After careful review of his application, military records, and all other available evidence, the ADRB determined he was properly and equitably discharged and denied his request.

10. Regulatory guidance provides when an individual is discharged under the provisions of AR 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

11. 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:

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 record, the Board found insufficient evidence of in-service mitigating factors to overcome the misconduct of drug abuse. The applicant provided no post service achievements or character letters of support for the Board to weigh for consideration.

2. The applicant was discharged for patterns of 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. Based on the preponderance of evidence, the Board denied relief.

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.

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. AR 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - 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. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions (UOTHC) was

normally considered appropriate. However, the separation authority could direct a general discharge if such was merited by the Soldier's overall record.

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//