

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 August 2024

DOCKET NUMBER: AR20230013332

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 3 December 1986
- DA Form 4187 (Personnel Action) dated 3 April 2004
- NGB Form 22 (Report of Separation and Record of Service) effective date 15 September 2004
- Orders Number 07-020-00053 dated 20 January 2007
- Seven (7) page printout of verification of military experience and training
- [REDACTED] Police Department Training Record
- Five (5) Certificates of Training/Completion
- Department of Public Safety Standards and Training Employee Profile printout
- Character Reference 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:

a. He is requesting his DD Form 214 reflect an honorable discharge from both the Army National Guard (ARNG) and the U.S. Army Reserve (USAR). He applied and received a waiver to reenlist after active service and received a general discharge. Since active duty he has since retired as a police sergeant with 23 years of honorable service. He graduated both state and federal law enforcement academies. He has taught classes at academies and was a department instructor.

b. He served in the ARNG and USAR and received an honorable discharge from both while receiving awards and promotions. He has not been in any trouble in his 23 years as a police officer, detective, and sergeant with the state and federal academies. His delay in this request was due to him being unaware of the option to request and upgrade.

3. A review of the applicant's service records show:

a. The applicant enlisted in the Regular Army on 31 January 1984.

b. His DA Form 2-1 (Personnel Qualification Record – Part II) shows in item 5 (Overseas Service) service in Germany from 9 December 1985 to 3 November 1986.

c. The applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on 15 January 1986, for being incapacitated for the proper performance of his duties, on or about 19 December 1985. His punishments included reduction to private (E-2).

d. The applicant received a letter from his command, dated 27 January 1986 which shows he had written two (2) dishonored checks on 25 December 1985 and 26 December 1985 to the [REDACTED] Club System. He was given a suspense of 3 February 1986 to pay \$92.00. The applicant again received a letter from his command dated 11 February 1986 for failure to pay the \$92.00 debt, he was given a 5 day suspense to make payment.

e. The applicant was counseled on eight different occasions from 27 March 1986 to 28 July 1986.

f. The applicant accepted NJP, under the provisions of Article 15 of the UCMJ, for misconduct on 9 July 1986, for wrongful use of marijuana on or about the period 18 April 1986 to 28 April 1986. His punishment included reduction to private first class/(E-3).

g. The applicant's record shows he was command referred to the Alcohol and Drug Abuse Prevention and Control Program on 4 August 1986 to attend the track II program for wrongful use of marijuana.

h. DA Form 4126-R (Bar to Reenlistment Certificate) dated 13 August 1986 shows the applicant received a bar to reenlistment.

i. The applicant accepted NJP, under the provisions of Article 15 of the UCMJ, for misconduct on 10 September 1986, for having been restricted to the billets, place of worship, dining facility and place of duty, did break said restriction. His punishment included reduction to private/(E-1).

4. On 27 October 1986, the immediate commander notified the applicant of his intent to initiate actions to separate him from service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Section II, paragraph 2-2. The commander specifically noted the applicant having received three separate Article 15s for misconduct and he undermines the good discipline of the unit and trust place in him by the unit.

a. The applicant acknowledged receipt of his commander's notification on the same date.

b. On 27 October 1986, the applicant's commander formally recommended his separation from service with a General Discharge Certificate under the provisions of Chapter 14, paragraph 14-12b and 14 12d, Army Regulation 635-200 for abuse of an illegal drug. The commander also notes the applicant's duty performance was marginal, and he had created an unhealthy atmosphere within his platoon and company. He does not possess the total Soldier qualities they are looking for in the Army.

5. On 28 October 1986, the applicant was advised by his consulting counsel of the basis for the contemplated action to separate him for commission of a serious offense under AR 635-200, Chapter 14, and its effects; of the rights available to him; and the effect of any action taken by him in waiving his rights.

a. He understood he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him.

b. He further understood that he would be ineligible to apply for enlistment in the United States Army for a period of 2 years after discharge .

c. He waived a personal appearance before the board, and he elected not to submit a statement in his own behalf.

6. The applicant's intermediate commander recommended approval of the separation action with a General Discharge Certificate.

7. On 17 November 1986 the separation authority approved the chain of command's recommendation for the applicant's discharge under the provisions of AR 635-200, Chapter 14 and directed the issuance of a General Discharge Certificate.

8. On 3 December 1986, the applicant was discharged under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct/abuse of illegal drugs with an under honorable conditions (general) characterization of service. His DD Form 214 shows he completed 2 years, 10 months, and 3 days of net active service during the covered period.

9. The applicant provides:

a. A DD Form 4187 dated 3 April 2004 to show his promotion to Specialist/(E-4) in the Army National Guard

b. NGB Form 22 with an effective date of 15 September 2004 to show he received an honorable discharge after serving 1 year, 4 months and 1 day of active service that period.

c. Orders 07-020-00053, issued by Headquarters, Headquarters, United States (U.S.) Army, Civil Affairs and Psychological Operations Command, Fort Bragg, NC dated 20 January 2007 to show he received an honorable discharge from the U.S. Army Reserve effective 21 January 2007.

d. Seven pages of verified military experience and training.

e. Two page training record from [REDACTED] Police Department.

f. Five certificates of course completion.

g. DPSST Employee profile which shows his time of service as a police officer.

h. The applicant provides a character reference letter from the chief of police who attests to him being a skilled investigator with above average interview and interrogation skills. He has great compassion towards victims and their families. He has proven himself to be a good supervisor responsible for scheduling and managing 8-10 patrol officers. He has also proven to be a reliable asset by attending meetings and official functions as a representative of [REDACTED] Police Department. In addition, he has received several awards and letters of commendation including the Medal of Valor.

10. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his service characterization. The ADRB considered his request on 1 September 1995, determined the reason for discharge and the characterization of service were both proper and equitable and denied his request for relief.

11. Regulatory guidance provides that a discharge under other than honorable conditions was normally considered appropriate for Soldier's discharged under the provisions of AR 635-200, Chapter 14. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

12. The applicant provided argument and/or evidence the Board should consider, along with the applicant's overall record, in accordance with the published equity, injustice, or clemency determination guidance

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. One potential outcome discussed was to grant relief based upon the misconduct involved and the guidance on liberal consideration related to discharge upgrade requests. However, based upon the lengthy pattern of misconduct and the current characterization of service, the Board concluded there was insufficient evidence of an error or injustice warranting a correction to the applicant's characterization of service.

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.

2/5/2025

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 635-200, in effect at the time, set 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.

(1) Soldiers are subject to separation under the provisions of this chapter under, paragraph 14-12c for commission of a serious military or civilian offense if the specific circumstances of the offense warrant separation and a punitive discharge would be authorized for the same of closely related offense under the Manual for court-martial.

(2) A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if such were 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 DRBs and 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 on the basis of 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//