

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 July 2024

DOCKET NUMBER: AR20230013342

APPLICANT REQUESTS: an upgrade of his general, under honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Separation Orders 058-003 dated 11 June 1994
- Veterans United Home Loans Communication
- Department of Veterans Affairs (VA) Loan Center Letter dated 22 August 2023

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 is requesting an upgrade of his discharge. He made a mistake 30 years ago at a party and that decision cost him and he believes led to his general discharge. He is now a teacher and a role model to kids and needs help obtaining an upgraded discharge to reflect honorable for the Veteran United Home Loans.
3. The applicant provides:
 - a. Orders 058-003 dated 11 June 1994, to be referenced in the service record.
 - b. Email correspondence from Veterans United Home Loans dated 24 August 2023, detailing a requirement for a DD Form 214 (Certificate of Release or Discharge from Active Duty) with an honorable characterization of service.
 - c. A letter from the VA Atlanta Regional Loan Center dated 22 August 2023, notified the applicant they are unable to make an eligibility determination based on the

documents provided. The applicant was required to provide additional proof of his honorable discharge for the Army Reserve for the time period ending in 1994.

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

a. He enlisted in the U.S. Army Reserve (USAR) on 13 August 1986.

b. Orders 163-16, dated 13 August 1986, ordered the applicant to Initial Active Duty Training (IADT) for 20 weeks for attendance to basic training and advanced individual training.

c. On 10 June 1989, he was honorably released from active duty. His DD Form 214 shows he completed 5 months and 8 days of active service with no lost time. He was assigned separation code MBK and the narrative reason for separation listed as "Expiration of the Term of Service", with no reentry code. It also shows he was awarded or authorized the Army Service Ribbon and the Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M16).

d. A Bar to Reenlistment was placed on the applicant on 5 April 1993 for incidents that involved drinking, aggression and fighting. Other incidents that caused him to be barred from reenlisting involved improper use of a weapon and provoking a confrontation with a noncommissioned officer (NCO). Additionally, applicant also tested positive for drug use during a January 1993 urinalysis testing.

e. On 5 April 1993, a DA Form 5248-R, (Report of Unfavorable Information for Security Determination) was completed further clarifying the applicant's misconduct. The applicant tested positive for THC and cocaine indicated in a urinalysis drug testing on 16 January 1993. He had been counseled for fighting while at annual training and for excessive use of alcohol. The DA Form 5248-R also indicates that the applicant was informed of the urinalysis results and given an option to appear before a separation board.

f. On 5 April 1993, the Personnel Records Supervisor of the 347th Personnel Service Company signed an Affidavit of Service by Mail certifying that the applicant was mailed a copy of notification of separation under Army Regulation (AR) 135-178 (Enlisted Administrative Separations) at his last known address by mail.

g. On 5 April 1993, the applicant's commander notified the applicant of his intent to separate him from the US Army Reserves under the provisions of AR 135-178, Chapter 7, for misconduct. The reason for his proposed action was for the applicant receiving a positive result on a urinalysis test for THC and cocaine on 16 January 1993.

h. The commander suspended the action for 45 days to give the applicant an opportunity to consult with legal counsel and acknowledge the below:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a character of service that is less than honorable was issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he will be ineligible to apply for enlistment for a period of 2 years after discharge
- if he elects to submit matters on his own behalf
- failure to respond to within 30 days and request consideration by an Administrative Separation board be considered a waiver of that right

i. On 11 July 1993, an administrative separation board was conducted, and a DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers) indicated the board recommended the applicant should be separated from the military and issued a general, under honorable conditions discharge.

j. The separation authority approved the findings and recommendations of the administrative separation board separating the applicant from the military and stated he will be issued a general, under honorable conditions discharge.

k. Orders 058-003, dated 11 June 1994, discharged the applicant from the United States Army Reserve (USAR) with a general, under honorable conditions characterization of service with an effective date of 11 June 1994.

5. On 11 August 1997, the applicant was notified 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.

6. 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.

7. By regulation (AR 135-178), a Soldier may be discharged for misconduct when it is determined that the Soldier is unqualified for further military service by reason of one or more of the following circumstances:

- minor disciplinary infractions – a pattern of misconduct consisting solely of minor disciplinary infractions

- a pattern of misconduct – consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline
- commission of a serious offense – a serious military or civilian offense, if the specific circumstances of the offense warrant discharge and a punitive discharge would be authorized for the same or a closely related offense under the Uniform Code of Military Justice (UCMJ)
- abuse of illegal drugs – self explanatory

8. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

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 DoD guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant exhibited a pattern of misconduct consisting of improper use of a weapon and provoking a confrontation with an NCO and testing positive for drug use during a urinalysis testing. As a result, his chain of command initiated separation action against him for unfitness. An administrative separation board confirmed the finding of misconduct and recommended his separation. He was separated with an under honorable conditions discharge (general). The Board found no error or injustice in his separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that 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.

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 135-178 (Enlisted Administrative Separations), sets policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of Army National Guard of the United States (ARNGUS) and U.S. Army Reserve (USAR) enlisted soldiers for a variety of reasons.

a. An honorable characterization is appropriate when the quality of the Soldier'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. If a soldier's service has been honest and faithful, it is appropriate to characterize that service as under honorable conditions. Characterization of service as general (under honorable conditions) is warranted when significant negative aspect of the Soldier's conduct or performance of duty outweighs positive aspects of the Soldier's military record.

c. Chapter 7 (Misconduct) states a Soldier may be discharged for misconduct when it is determined that the Soldier is unqualified for further military service by reason of one or more of the following circumstances:

- minor disciplinary infractions – a pattern of misconduct consisting solely of minor disciplinary infractions
- a pattern of misconduct – consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline
- commission of a serious offense – a serious military or civilian offense, if the specific circumstances of the offense warrant discharge and a punitive discharge would be authorized for the same or a closely related offense under the Uniform Code of Military Justice (UCMJ)
- abuse of illegal drugs – self explanatory

4. Army Regulation 635-5 (Separation Documents) 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.

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. 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//