

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 July 2024

DOCKET NUMBER: AR20230013793

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)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 from general, under honorable conditions to honorable. He served his country with duty and honor. He loved his time in the Army and believes he had a great career.
3. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 31 January 1985.
  - b. On 19 September 1985, he accepted nonjudicial punishment for operating a vehicle while drunk on or about 31 July 1985.
  - c. On 2 December 1985, the applicant received a general officer memorandum of reprimand (GOMOR) for drunk driving. The imposing general officer directed the GOMOR and all related documents, be permanently filed in the applicant's Military Personnel Records Jacket.

d. On 10 March 1987, the applicant underwent a medical examination for the purpose of administrative separation which indicated he was generally in good health. The applicant was marked qualified for separation.

- Standard Form (SF) 88 (Report of Medical Examination)
- SF 93 (Report of Medical History)

e. On 23 March 1987, the applicant underwent a mental evaluation. The DA Form 3822-R (Report of Mental Status Evaluation) shows he was mentally responsible for his behavior and had the mental capacity to understand and participate in any proceedings.

f. On 24 March 1987, the immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 14, paragraph 14-12b. The specific reasons for his proposed recommendation were based that the applicant receiving a Field Grade Article 15 in September of 1985 for DUI (driving under the influence) and he was pending civil action for DUI in Junction City, Kansas, in addition to charges for leaving the scene of an accident on 7 March 1987. The applicant acknowledged receipt on the same day.

g. On 24 March 1987, after consulting with legal counsel, he 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 other than honorable conditions is issued to him
- he may be ineligible for many or all benefits as a Veteran under both Federal and State laws
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he is ineligible to apply for enlistment in the U.S. Army for a period of two years after discharge

h. On 25 March 1987, the immediate commander-initiated separation action against the applicant under the provisions of AR 635-200, Chapter 14, paragraph 14-12b, for two separate offenses of DUI which constituted a definite pattern of misconduct. He recommended that his period of service be characterized as general, under honorable conditions. The intermediate commander recommended the applicant's term of service be characterized as honorable.

i. On 25 March 1987, the separation authority approved the discharge under the provisions of AR 635-200, Chapter 14, paragraph 14-12b for misconduct. He would be issued a General Discharge Certificate.

j. DA Form 4187 (Personnel Action) shows, the applicant was confined by civilian authorities on 2 April 1987. He was released from civilian confinement on or about 8 April 1987 and returned to present for duty.

k. On 9 April 1987, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 shows he completed 2 years, 2 months, and 3 days of active service with 6 days of lost time. He was assigned separation code JKM and the narrative reason for separation listed as "Misconduct – pattern of misconduct" with reentry (RE) code 3, RE-3b. It also shows he was awarded or authorized:

- Army Service Ribbon
- Driver-Wheel Badge
- Army Achievement Medal
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Sharpshooter Marksmanship Qualification Badge with Pistol Bar (.45 Cal)
- 2nd Class Hand Grenade

4. On 14 January 1997, 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.

5. By regulation (AR 635-200), 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.

6. 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:

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 records, the Board found insufficient evidence of in-service mitigating factors to overcome the misconduct of two separate offenses of driving under the influence and on one occasion leaving the scene of the crime.

2. The applicant provided no post service achievements or character letters of support for Board consideration. The Board under liberal consideration carefully review the applicant's 2 years, 2 months, and 3 days of active service and agreed the applicant's pattern of misconduct is not mitigatable for an upgrade. Furthermore, the Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to honorable. Based on this, 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. 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. 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. 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.

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/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//