

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 July 2024

DOCKET NUMBER: AR20230014346

APPLICANT REQUESTS:

- an upgrade of his general, under honorable conditions discharge to honorable
- a personnel appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 5016 (Chronological Statement of Retirement Points), 9 May 2022
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 7 June 2003
- Orders 05-168-00034, dated 17 June 2005

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. The correction should be made to allow him to qualify for a loan program under the Department of Veterans Affairs (VA).
3. The applicant provides:
 - a. A DA Form 5016 dated 9 May 2022, which provides a detailed listing of retirement points earned in the previous completed anniversary years and a summary of the applicant's service from 1996 through 2005.
 - b. A DD Form 214 for his honorable active-duty service period from 15 March 2003 through 7 June 2003. He was assigned separation code MBK and the narrative reason

for separation listed as "Completion of Required Active Service." It also shows he was awarded or authorized:

- Army Reserve Components Achievement Medal
- National Defense Service Medal
- Armed Forces Reserve Medal with "M" Device
- Army Service Ribbon
- Expert Marksmanship Qualification with Rifle Badge (M-16)
- Expert Marksmanship Qualification with Hand Grenade Badge

c. Orders 05-168-00034 dated 17 June 2005, to be referenced in the service record.

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

a. He enlisted into the U.S. Army Reserve (USAR) on 3 January 1996.

b. He entered a period of active-duty training (ADT) on 30 May 1997. He was released from ADT on 1 August 1997 with an uncharacterized characterization of service. His DD Form 214 shows he completed 2 months and 2 days of active service. He was assigned separation code MBK and the narrative reason for separation listed as "Completion of Required Active Service." He completed the Petroleum Supply Specialist course in August 1997.

c. The available service record was void of the facts and circumstances surrounding the applicant's discharge in addition to the DD Form 214 provided by the applicant for the service period ending 7 June 2003.

d. Orders 05-168-00034, dated 17 June 2005, discharged the applicant from the USAR effective 17 July 2005 with a general, under honorable conditions characterization of service.

5. A review of the applicant's service record confirms an administrative entry was omitted from his DD Form 214. The entry will be added to his DD Form 214 as an administrative correction and will not be considered by the Board.

6. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

7. 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.

8. 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

9. 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. Upon review of the applicant's petition and available military records, the Board determined the applicant's record is absent the facts and circumstances surrounding his discharge. The Board noted due to the lack of evidence, the Board cannot determine if there is an error or injustice regarding the applicant discharge from the United States Reserve. The applicant provided no post service achievements or character letters of support for the Board to weigh a determination.

2. This board is not an investigative body. The Board determined despite the absence of the applicant's separation records from the USAR, they agreed the burden of proof rest on the applicant, however, he did not provide any supporting documentation and his service record has insufficient evidence to support the applicant contentions of a discharge upgrade.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to

render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's service record shows his DD Form 214 for the service period ending 30 May 1997, should be reissued to show his character of service as "honorable" vice "uncharacterized." The applicant completed initial active-duty training.

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 12 (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. 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//