

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 July 2024

DOCKET NUMBER: AR20230014373

APPLICANT REQUESTS:

- an upgrade of his general, under honorable conditions discharge to honorable
- a change in his 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)
- Self-Authored Letter, 26 August 2023
- Statement of Fact Memorandum, 21 July 2016
- DA Form 4466 (Patient Progress Report (PPR), 14 September 2016)

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 status from general, under honorable conditions to honorable. Additionally, he seeks to change the narrative reason for separation. He further noted at the time of his discharge, he was actively participating in the Army Substance Abuse Program (ASAP). His current discharge classification has posed significant challenges in securing meaningful employment. The applicant wishes to emphasize that he has taken full responsibility for his actions during that period. Since then, he has abstained from alcohol and remain committed to maintaining a positive trajectory. An upgraded discharge would open doors and create opportunities beyond the applicant's current limitations. Furthermore, he has successfully earned a Bachelor of Science degree in accounting.

a. In a self-authored letter dated 26 August 2023, the applicant states he believes that a fair assessment of his circumstances will reveal the need for reconsideration. Additionally, the applicant states there is conflicting information arising from two

sources; the DA Form 4466 and a memorandum provided by the same Clinical Director of the Army Substance Abuse Program at Fort Bliss. The memorandum labeled the applicant as a rehabilitation failure due to his second relapse while enrolled in ASAP. Specifically, his arrest for driving under the influence. Contradicting the memorandum, the DA Form 4466 reflects successful treatment and satisfactory completion of the ASAP.

b. Additionally, the applicant states, given the option by his first sergeant, he made the difficult decision to continue with the separation process. His motivation was to reunite with his family after a failed attempt to establish joint domicile utilizing the Married Army Couple Program. Family considerations weighed heavy on the applicant's mind, so he chose their well-being over his military career. Furthermore, the applicant states his commander assured him that an honorable discharge would be granted based on the DA Form 4466 and his circumstances.

3. The applicant provides:

a. A memorandum, subject: Statement of Fact Pertaining to PFC D.F., dated 21 July 2016 from the acting Clinical Director, ASAP to the applicant's immediate commander.

(1) The applicant was command-referral to the ASAP at Camp Humphreys, Korea on 14 May 2015. During enrollment, he was found drunk on duty, leading to a referral to a Residential Treatment Facility (RTF) on 16 June 2015. The applicant completed the RTF on 21 July 2015. As the RTF requires a one-year follow-up in ASAP, the applicant was assessed by the Fort Bliss ASAP on 23 February 2016 after a permanent change of station.

(2) The applicant attended all scheduled appointments with no excused absences. On 26 March 2016, the applicant was arrested for driving under the influence. This incident marked his second relapse since his initial enrollment in 2015. The Rehabilitation Treatment Team determined that the applicant was a rehabilitation failure due to non-compliance, and the provisions of Army Regulation (AR) 600-85 (The Army Substance Abuse Program), paragraph 8-13 were applicable. The acting Clinical Director cleared command to move forward with any administrative action deemed necessary.

b. A DA Form 4466 dated 14 September 2016 shows:

- Item 4: Reason for Report: Release from Program
- Item 15: Counselor's Assessment of Progress: Good
- Item 16: Counselor's Recommendation: Terminate Treatment, Separate
- Item 17: Commander's Appraisal of Performance: Satisfactory
- Item 18: Commander's Appraisal of Conduct: Satisfactory

- Item 19: Commander's Decision: Terminate Treatment, Separate
- Item 20: Reason for Release from Program: Program Complete, Returned to Duty
- Item 21: Commander's Assessment: Success

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

a. He enlisted in the Regular Army on 4 March 2014.

b. On 3 May 2016, the applicant received General Officer Memorandum of Reprimand (GOMOR) for driving while intoxicated while attempting to enter Fort Bliss. The odor of an alcoholic beverage was detected emanating from his person and he failed a standardized field sobriety test. The applicant was administered a breathalyzer test that confirmed his consumption of alcohol and revealed his blood alcohol content to be 0.15%, in violation of the Uniform Code of Military Justice and the Texas Penal Code. The applicant acknowledged receipt of the reprimand on 5 May 2016 and elected not to submit any written matters.

c. On 23 May 2016, after thoroughly reviewing all matters submitted in response to the memorandum of reprimand and after careful consideration, the imposing general officer directed the GOMOR and all related documents, be permanently filed in the applicant's AMHRR.

d. The Enlisted Record Brief indicates the applicant was reduced to the rank of Private First Class/E-3 on 6 May 2016.

e. On 18 July 2016, the applicant underwent a medical examination for the purpose of separation which indicated he was generally in good health. He was subsequently marked qualified for service.

- DD Form 2808 (Report of Medical Examination)
- DD Form 2807-1 (Report of Medical History)

f. A DA Form 3822-R (Report of Mental Status Evaluation) indicates that the applicant was fit for duty, including deployment. The applicant demonstrated the ability to understand and participate in administrative proceedings and appreciate the differences between right and wrong. He was psychiatrically cleared for administrative separation and any other administrative action deemed appropriate by the Command.

g. On 12 August 2016, the applicant's immediate commander notified him of the intent to separate him under the provisions of AR 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c. The proposed action was based on the applicant's commission of a serious offense: operating a vehicle while under the influence of alcohol. He acknowledged receipt of the notification the same day.

h. On 24 August 2016, after waiving consult with legal counsel, he acknowledged:

- receipt of the administrative briefing
- the basis for his contemplated separation
- 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 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

i. On 24 August 2016, the immediate commander initiated separation action against the applicant under the provisions of AR 635-200, Chapter 14-12c for commission of a serious offense. He recommended his service be characterized as general, under honorable conditions. The intermediate commander recommended approval.

j. On 31 August 2016, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14-12c for commission of a serious offense. His service would be characterized as general, under honorable conditions.

k. The DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged from active duty on 21 September 2016 with a general, under honorable conditions characterization of service under the provisions of AR 635-200, Chapter 14-12c. He was assigned separation code JKQ and the narrative reason for separation is listed as "Misconduct (Serious Offense)" with reentry code 3. He completed 2 years, 6 months, and 18 days of active service with no lost time. It also shows he was awarded or authorized the:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Korea Defense Service Medal
- Army Service Ribbon

5. On 11 January 2019, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing. The ADRB determined that he was properly and equitably discharged. Subsequently, his request for a change in the character and reason of his discharge was denied.

6. By regulation (AR 635-200), Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to

include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Army policy states that an under other than honorable conditions discharge is normally considered appropriate; however, a general, under honorable conditions or an honorable discharge may be granted.

7. By regulation (AR 635-5-1), the SPD code of "JKQ" is the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c, Misconduct (Serious Offense).

8. In reaching its determination, the Board can consider the applicant's 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.

a. Discharge Upgrade: Deny. The evidence shows the applicant committed a serious offense (driving while intoxicated while attempting to enter Fort Bliss), despite having been previously enrolled in a treatment program. As a result, his chain of command initiated separation action against him for misconduct. He was separated with an under honorable conditions (general) discharge. The Board found no error or injustice in his separation processing, and his discharge characterization appropriate. 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.

b. Reason for Separation: Deny. The applicant's narrative reason for separation was assigned based on the fact that he was discharged under chapter 14 of AR 635-200. The Board noted that the underlying reason for his separation is his misconduct. The only valid narrative reason under chapter 14 of AR 635-200 is misconduct which is correctly listed on his DD Form 214. The Board also found no error or injustice in the narrative reason for his separation.

c. Separation Code and RE Code: Deny. Enlisted Soldiers who are discharged under chapter 14 of AR 635-200 for serious misconduct (no drugs) are assigned Separation Code JKQ. At the time of his separation, this Separation Code had a

corresponding RE Code of 3. The Board further found his Separation Code and RE Code are neither in error nor 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.

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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.

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 (Active Duty Enlisted Administrative Separations) 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 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. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c, Misconduct (Serious Offense). The SPD Code/RE Code Cross Reference Table shows that a Soldier assigned an SPD Code of "JKQ" will be assigned an RE Code of 3.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards (DRB) and Service 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, 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//