

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 July 2024

DOCKET NUMBER: AR20230014404

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

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 Statement
- DA Form 2627 (Record of Proceedings Under Article 15, UCMJ) dated 16 November 2011
- DA Form 2627 dated 19 November 2010
- DA Form 2627-2 (Record of Supplementary Action Under Article 15, UCMJ) dated on or about 12 December 2011
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 20 January 2012
- Two Character Letters

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 now understands that his discharge did not follow legal requirements and he was denied his legal rights.

a. He believes it was a personal vendetta against him because he was not part of the "good ole boy network" within the command. He wanted to make a career out of the military, but the command continued with their actions of getting him out of the military by processing a supplementary action which was undated. He received an Article 15 dated 23 November 2010 for two incidents of failing to go to his appointed place of duty and disrespect. He defends the incidents of failing to go as he was injured/on medical

profile and did not recall the details of the incident. The third incident was for disrespect and he was never disrespectful.

b. On several occasions he was pressured by the command sergeant major and the commander to not see legal and at that time he thought he could trust his command. He later learned that it was illegal for the command to tell a troop not to see JAG under the threat of a more severe punishment. The subsequent Article 15 he received was for missing formation but by then he was frustrated with the command and just accepted the punishment.

c. He was informed by a staff sergeant that he could re-establish his career by boosting his physical strength and size by taking testosterone. The drugs were provided to him by this staff sergeant. He was not sure of this method, so he placed the provided drugs in his sock drawer and never used it. When the drugs were discovered by the command, the previous Article 15 suspended punishment was imposed by use of the supplemental form, but the form was not signed or dated by the commander. He further referenced statements to confirm that he was unjustly harassed, penalized, and that the command had a vendetta towards him.

3. The applicant provides:

a. The below listed documents to be referenced in the service record:

- DA Form 2627, 19 November 2010
- DA Form 2627, 16 November 2011
- DA Form 2627-2
- DD Form 214, for the period ending 20 January 2012

b. Two character letters:

(1) A character letter of support from Mr. RJG states he is a retired sergeant first class with 20 years of service and served with the applicant. The applicant is a person of integrity, honesty, and dedication who routinely volunteered for vigorous physical fitness program and was selected for participation in the physical readiness training (PRT) course for his impeccable leadership and military skills. The applicant was absent on a multitude of occasions from PRT but it was discussed amongst the two of them. There were investigations and command climate surveys for hazing and leadership abuse within the command and the applicant was one of the many to fall under the abusiveness of leadership corruption. Mr. RJG believes the applicant would have had an exceptional military career provided the opportunity to serve in a non-abusive/prejudicial leadership environment.

(2) A character letter of support from Mr. BS states he and the applicant met in basic training and served together in the 82d Airborne Division. He described the applicant as a hard charger, an outstanding Soldier, a needed battle buddy, and passionate about the job. Although he was in different troop, he witnessed a targeted approach to hazing towards the applicant. He believes the applicant received an abnormal amount of hazing, especially from his immediate supervisors. It appeared they were simply trying to get him to quit. He attempted to assist the applicant with trying to get moved under different leadership, but he was eventually moved to the headquarters and was not working in his job with his peers. Shortly after the move, the applicant was manipulated into accepting a chapter out of the service. He believes the applicant is a great man and continues to have a positive attitude. In his opinion, he wrongfully had some of his most cherished Veteran benefits taken from him through an unfitting discharge. The applicant served his country proudly and deserves better treatment.

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

- a. He enlisted in the Regular Army on 20 July 2009.
- b. On 19 November 2010, he accepted nonjudicial punishment for two specifications of failure to be at his appointed places of duty and for being disrespectful to a noncommissioned officer (NCO).
- c. On 16 November 2011, he accepted nonjudicial punishment for the following specifications and his punishment included reduction to Private (E2):
 - three instances of failure to be at his appointed place of duty
 - three instances of failure to obey a lawful order
 - two instances of false official statement
- d. On 12 December 2011, the suspension of the punishment of forfeiture \$383.00 pay per month for two months imposed on 16 November 2011 was vacated for failure to obey a lawful general regulation on 14 September 2011.
- e. The service record includes the applicant's medical evaluation for the purpose of administrative separation which indicated he was generally in good health. He was marked qualified for service.
 - DD Form 2808 (Report of Medical Examination), 8 December 2011
 - DD Form 2807-1 (Report of Medical History), 8 December 2011
 - DA Form 3822 (Report of Mental Status Evaluation), 22 November 2011

f. On 14 December 2011, the applicant's immediate commander notified the applicant, of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) of Chapter 14, for patterns of misconduct. The reasons for his proposed action were based upon the applicant's receipt of nonjudicial punishment for failure to be at his appointed place of duty, disobeying a lawful order, false official statements, and failure to obey a lawful general regulation. The applicant acknowledged receipt of the notification of separation action on 14 December 2011.

g. On 28 December 2011, after being afforded consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he was not entitled to an administrative separation board
- he elected not to submit matters on his own behalf

h. On 28 December 2011, the immediate commander initiated separation action against the applicant for patterns of misconduct. He recommended that his period of service be characterized as general, under honorable conditions. The intermediate commander recommended approval.

i. On 3 January 2012, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 14, AR 635-200, paragraph 14-12b for patterns of misconduct. He would be issued a general, under honorable conditions discharge characterization of service.

j. On 20 January 2012, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years, 6 months, and 1 day of active service with no lost time. He was assigned separation code JKA and the narrative reason for separation listed as "Pattern of Misconduct," with reentry code 3. It also shows he was awarded or authorized:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Parachutist Badge

5. On 25 June 2013, the Army Discharge Review Board (ADRB) reviewed the applicant's application, military records and all other available evidence and found that the applicants discharge was proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as patterns of 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.
7. 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. The evidence shows the applicant exhibited a pattern of misconduct consisting of receipt of nonjudicial punishment for failure to be at his appointed place of duty, disobeying a lawful order, false official statements, and failure to obey a lawful general regulation. As a result, his chain of command, initiated separation action against him. He was separated with a general discharge. He completed 2 years, 6 months, and 1 day of active service. Given his continued misconduct, the Board found no error or injustice in his separation processing, and a general discharge is an appropriate characterization of his service. Although the applicant provides two letters from individuals who speak of the applicant's integrity, honesty, and dedication, he does not express remorse and blames his discharge on others. Additionally, he does not provide documentation of any post discharge achievements or accomplishments. Thus, the Board believed a general discharge is appropriate given his misconduct, and 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

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| : | : | : | 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), 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.

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//