

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 August 2024

DOCKET NUMBER: AR20230014827

APPLICANT REQUESTS: reconsideration of his previous request to upgrade his under honorable conditions (general) discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20140018188 on 23 June 2015

2. The applicant states he feels that his character of service is an injustice due to his aspiration for wanting to attend Office Candidate School (OCS) while stationed in Germany. His then first sergeant told him that he would never go to OCS and he let his emotions get in the way of his goal. Although he passed the OCS test, he felt it was unfair that he was unable to attend the course. If he had the chance to do it over again, he would have joined the Reserve Officers' Training Corps (ROTC) in college before joining the military.

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

a. He enlisted in the Regular Army on 29 May 1990.

b. DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), dated 29 May 1991, shows the applicant accepted nonjudicial punishment (NJP) for violating Article 86 (Absent Without Leave (AWOL)) of the UCMJ, by failing to go to his appointed place of duty at the time prescribed. His punishment included reduction to private/E-1.

c. On 3 January 1991 [sic], in a memorandum to the 8th Infantry Division Commanding General, the applicant requested a general discharge.

d. On 3 January 1992, the applicant's supervisor wrote a character letter that described him as "very intelligent, responsible and hardworking." Additionally, he attested that the applicant has always been respectful, highly motivated, and invaluable.

e. On 13 January 1992, the approval authority directed separation of the applicant with a General Discharge Certificate.

f. He was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12b, for patterns of misconduct on 17 January 1992 with an under honorable conditions (general) character of service. He completed 1 year, 7 months, and 19 days of active service. His DD Form 214 shows in:

- block 24 (Character of Service): Under Honorable Conditions (General)
- block 25 (Separation Authority): AR 635-200, Para 14-12b
- block 28 (Narrative Reason for Separation): Misconduct – Pattern of Misconduct

g. The applicant's service record is void of the evidence surrounding his separation proceedings.

h. On 23 June 2015, the Army Board of Correction of Military Records (ABCMR) denied his request to upgrade his discharge. The Board found insufficient evidence of in-service mitigating factors for the misconduct. 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 and that relief was not warranted.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. One potential outcome discussed was to grant relief based upon the available evidence and the statement of the applicant. However, based upon the applicant's record being void of the evidence surrounding his misconduct and the current narrative reason for separation stating pattern of misconduct, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's general discharge characterization of service.

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.

2/5/2025

X

CHAIRPERSON

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. 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. It states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.

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. Paragraph 3-7a (Honorable Discharge) states 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. Paragraph 3-7b (General Discharge) states 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 DRBs and 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 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//