

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 August 2024

DOCKET NUMBER: AR20230015063

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) character of service 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)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 does not provide a statement in support of his request.
3. The applicant enlisted in the Regular Army on 6 February 2003. Upon completion of initial entry training, he was awarded military occupational specialty 11B (Infantryman). He reenlisted on 18 March 2005. The highest rank he attained was specialist/E-4.
4. He served in Afghanistan from 25 July 2005 to 11 November 2005 and from 7 July 2006 to 31 January 2007.
5. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on the following occasions:
  - a. On 8 May 2007, for the wrongful use of cocaine, between on or about 15 February 2007 and 1 March 2007. His punishment consisted of reduction to private/E-1, forfeiture of \$650.00 pay per month for two months, 45 days of extra duty, and 45 days restriction.

b. On 29 June 2007, for operating a vehicle while drunk on or about 18 March 2007. His punishment consisted of reduction to private/E-1, forfeiture of \$650.00 pay per month for two months, 45 days of extra duty, and 45 days restriction.

6. The applicant underwent a mental health evaluation on 23 July 2007. The evaluating provider determined the applicant was able to distinguish right from wrong and to adhere to the right. He demonstrated no major psychiatric disorder and was cleared for any administrative action deemed necessary by his command.

7. On 10 August 2007, the applicant received a General Officer Memorandum of Reprimand (GOMOR) from his commanding general for the drunk driving incident on 18 March 2007. The applicant acknowledged receipt of the reprimand on 22 August 2007 and did not submit matters on his behalf within the allotted ten calendar days. His chain of command recommended the reprimand be filed in the performance section of his official military personnel file (OMPF). Subsequently, the commanding general directed the GOMOR be permanently filed in the applicant's OMPF.

8. The applicant's immediate commander notified the applicant on 22 August 2007, of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12b, by reason of pattern of misconduct. As the specific reasons, the commander cited the applicant's wrongful use of cocaine and driving while drunk. The applicant acknowledged receipt of the notification on the same date.

9. The applicant consulted with counsel and was advised of the basis for the contemplated actions to separate him and its effects; of the rights available to him; and the effect of any action taken by him to waive his rights. He requested a personal appearance and consideration of his case by an administrative separation board if his service was characterized less favorably than under honorable conditions (general). He elected to submit a statement in his own behalf. However, the statement is not available for review within the service record.

10. The applicant's immediate commander formally recommended his separation, prior to the expiration of his term of service, under the provisions of AR 635-200, paragraph 14-12b. The intermediate commander reviewed and concurred with the recommendation, further recommending the issuance of a general discharge.

11. On 28 September 2007, the separation authority approved the recommended separation action, waived the rehabilitative transfer requirement, and directed the applicant's service be characterized as general, under honorable conditions.

12. The applicant was discharged on 19 October 2007, under the provisions of AR 635-200, paragraph 14-12c (2), by reason of misconduct (drug abuse). His DD Form 214

(Certificate of Release or Discharge from Active Duty) confirms his character of service was under honorable conditions (general), with separation code JKK and reentry code RE-4. He was credited with 4 years, 8 months, and 14 days of net active service. He was authorized or awarded the:

- Army Commendation Medal
- Joint Service Achievement Medal
- Joint Meritorious Unit Award
- Army Good Conduct Medal
- Afghanistan Campaign Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- North Atlantic Treaty Organization Medal (2nd award)
- Combat Infantryman Badge
- Expert Infantryman Badge
- Driver and Mechanic Badge

13. Regulatory guidance provides when an individual is discharged under the provisions of AR 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

14. The Board should consider the applicant's overall 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 committed a serious offense (wrongful use of cocaine and driving while drunk). As a result, his chain of command, initiated separation action against him. He was separated for misconduct and received a general discharge. The Board found no error or injustice in his separation processing. The Board noted that the misconduct not only impacted him but also others, and that the general discharge he received is the appropriate characterization given the applicant's serious misconduct. 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 and reason for separation the applicant received upon separation were not in error or 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.

■

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, USC, 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. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions (UOTHC) was normally considered appropriate. However, the separation authority could direct a general discharge if such was merited by the Soldier's overall record.

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/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.

//NOTHING FOLLOWS//