

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 September 2024

DOCKET NUMBER: AR20230015150

APPLICANT REQUESTS:

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

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

- DD Form 149 (Application for Correction of Military Record)
- Three Letters of Support

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 believes he served honorably in the military from 31 August 2000 to 6 December 2002 the current classification of his discharge inaccurately represents his service and character.

a. Throughout his service, he demonstrated commitment and adherence to the values and standards of the military. His conduct was always in line with the principles expected of a servicemember (SM). The decision regarding his discharge status was premature and decided before the conclusion of the related legal proceedings and did not fully consider all the relevant facts of his case which led to an erroneous representation of his service record. The injustice of the situation was highlighted by the fact that similar cases have seen reassessments and upgrades in discharge statuses at the completion of the legal process. The absence of such a reassessment in his case indicates a disparity in the application of military justice.

b. The error in his discharge status significantly impacts his life post-military service and affects his opportunities for employment, access to benefits, and the deserved

recognition of his service. The current status unfairly undermines the dedication and integrity he consistently exhibited during his service. He requests a thorough review of his military records with a focus on correcting the discharge status. An upgrade to an under honorable conditions discharge would right this wrong, aligning his records with the true nature of service and ensure fair and just treatment. Attention to this matter is appreciated and correction of this error is crucial, not only for his personal record but also for maintaining the honor and values that the military represents.

3. The applicant provides three letters of support from coworkers and peers:

a. They express that as a coworker, the applicant, was a friend and a colleague as well. He consistently impressed them with his strong work ethic, professionalism, and dedication to excellence. He has been an invaluable member of their team and a joy to work with; he continually went above and beyond to ensure the success of projects. His attention to detail, problem-solving abilities, and commitment to customer satisfaction earned him the respect and admiration of both his colleagues and clients. He always displayed honesty, integrity, and loyalty and a natural inclination to help others and volunteer his services without question. They believe since his challenges in the Army he has displayed personal growth and his level of commitment and integrity warrants an upgrade to his discharge status.

b. A relations manager of a shelter where he was a dedicated volunteer for several years state, he has been an invaluable asset to their shelter and the broader community. He devoted countless hours assisting them with their mission to provide safe refuge and support for those in need. His strong work ethic, sense of compassion, and commitment was truly inspiring and greatly appreciated by the entire organization. He actively participated in numerous community projects and inspired others to become more involved and make a difference in the community. He displayed the values and principles he learned during his service, and they believe he embody the qualities of an honorable individual who has devoted his life to serving others and making a positive impact in his community. They believe his outstanding qualities and contributions make him a remarkable individual, deserving of your attention and consideration.

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

a. He enlisted in the Regular Army on 31 August 2000.

b. A DA Form 3822-R (Report of Mental Status Evaluation), dated 26 September 2002, confirmed the applicant was referred for a mental evaluation due to consideration for discharge. The applicant was cleared for any administrative action deemed appropriate by his command.

c. The service record includes the applicant's medical evaluation for the purpose of administrative separation which indicated he was qualified for service.

- DD Form 2807-1 (Report of Medical History) dated 2 October 2002
- DD Form 2808 (Report of Medical Examination) dated 2 October 2002

d. On 15 October 2002, the applicant's immediate commander notified the applicant of her intent to separate him under the provisions of Chapter 14, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) for commission of a serious offense. The specific reasons for her proposed recommendation were for charges on or about 19 September 2002 for felony menacing and on or about 3 July 2002 for assault and battery.

e. On 15 October 2002, after consulting with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if an under other than honorable conditions discharge is issued to him
- he may be ineligible for many or all benefits as a Veteran under both Federal and State law
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he is ineligible to apply for enlistment for a period of 2 years after discharge
- he elected to submit matters

f. On 29 October 2002, the applicant indicated he was being discharged because of the civilian charges against him. He expressed that there was not a court order, but the command told him that he was not allowed to talk to his wife and that created hardship for him because his wife is the only one that could bring him food. He had experienced pay issues causing additional hardship because of his single household income, hence the reason he had taken two financial loans. He is not a bad Soldier and has not done anything wrong and asked the command to delay his chapter but if he was discharged, he is issued an honorable discharge to allow him to attend school and continue to support his family as a contributing member of society.

g. On 29 October 2002, 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. The intermediate commander recommended approval and a general, under honorable conditions discharge.

h. On 12 November 2002, 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 14-12c for

commission of a serious offense. He would be issued a general, under honorable conditions characterization of service.

i. On 6 December 2002, he was discharged from active duty under the provisions of chapter 14-12c of AR 635-200 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, 3 months, and 6 days of active service with no lost time. He was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct," with reentry code 3. It also shows he was awarded or authorized:

- National Defense Service Medal
- Army Service Ribbon
- Marksman Marksmanship Qualification Badge with Rifle Bar

5. On 7 June 2006, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. 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.

7. By regulation (AR 635-200), 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.

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:

1. The Board determined 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.

2. 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 misconduct (felony menacing and assault and battery). As a result, her chain of command, initiated

separation action against him. He received an under honorable conditions discharge (general). The Board found no error or injustice in his separation processing. Also, although the applicant provided character reference letters in support of a clemency determination, the Board determined such letters did not outweigh the misconduct he committed and that a general discharge is the appropriate characterization of service in his case. Therefore, based on a preponderance of available 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

:	:	:	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 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 635-200 (Personnel Separations – Enlisted Personnel), 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//