

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 September 2024

DOCKET NUMBER: AR20240000699

APPLICANT REQUESTS:

- an upgrade of his general, under honorable conditions discharge to honorable
- a change in the 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
- Foreign Identification (ID) Photocopy
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 general, under honorable conditions discharge to honorable.
 - a. He served 2 years in the U.S. Army as an infantryman and loved every day he served the country. His career was destroyed by a mistake he made driving under the influence (DUI). He takes responsibility for his actions but further offered he wished to humanize himself and prove that it was a one-time incident and does not shape his character. He still enjoys putting his life on the line for the defenseless and even sought to help Ukraine without pay. He volunteered for 8 months and assisted in the liberation of 13 different cities and towns. He was responsible for his own meals and equipment.
 - b. He was stationed at Fort Irwin, CA, in the middle of the Mojave Desert, miles away from anything when his wife and the mother of his unborn child left him and moved back home to Massachusetts (MA). It was a very dark time for him, and he

resorted to drinking. He was left with his thoughts of his wife and son's future, and with thoughts he could not bear alone. He subsequently received a DUI and further sacrificed everything he loved. He was a great Soldier before the incident. He realized after returning from Ukraine that he still has a great desire to serve, and his first option would be to return to the U.S. Army. He is requesting an upgrade of his general, under honorable conditions discharge to honorable to facilitate his efforts in helping others.

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

- a. He enlisted in the Regular Army on 7 May 2018.
- b. On 18 November 2019, he received a General Officer Memorandum of Reprimand (GOMOR) for reckless driving and driving under the influence (DUI). On 19 July 2019, provided a sample for a blood alcohol concentration (BAC) test, after several attempts to evade and provide insufficient samples, he provided a sample which revealed a BAC level of .187.
- c. On 21 November 2019, the applicant acknowledged receipt of the GOMOR and elected to submit written matters within 7 calendar days.
- d. On 27 November 2019, the applicant requested the GOMOR be withdrawn or placed in his local file. He admits that drinking alcohol and making the decision to drive was a first time mistake. When pulled over by the California Highway Patrol, he failed the standard field sobriety test and showed a BAC of .187. He believes he let down his leaders and peers and left a blemish on his unit and the Army. He has always respected noncommissioned officers and officers and was never disrespectful to the senior authorities of the Army; he was loyal and took the Army serious. He endured an unscrupulous marriage and reverted to alcohol which resulted in him operating a vehicle under the influence. His arrest was a turnaround point for him and a wakeup call and afterwards he was still viewed by his peers to be hardworking. He refocused his priorities on physical training, infantryman skills, and retaining a respectful demeanor in and out of uniform. He concluded his statement with details of his remaining commitment to his unit and the Army.
- e. On 15 January 2020, 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 placed in his Army Military Human Resource Record (AMHRR).
- f. A DA Form 3822 (Report of Mental Status Evaluation), dated 7 January 2020, confirmed the applicant was referred for a mental evaluation for discharge consideration. The applicant was psychiatrically cleared for administrative separation.

g. 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 December 2019
- DD Form 2808 (Report of Medical Examination) dated 2 December 2019

h. On 4 February 2020, the applicant's immediate commander notified him of his intent to separate him under the provisions of Chapter 14-12c, Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) for commission of a serious offense. The specific reasons for his proposed recommendation were based upon on or about 19 July 2019, the applicant was stopped by police for reckless driving and missing a license plate. He was subsequently arrested and charged for DUI and provided a BAC sample which resulted in a reading of 0.187%. The applicant acknowledged receipt on the same day.

i. On 5 February 2020, after waiving his right to consult 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 a discharge under Other Than 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
- he elected to submit matters; however, matters were unavailable

j. On 16 March 2020, the immediate commander initiated separation action against the applicant for commission of a serious offense. He recommended that his period of service be characterized as general, under honorable conditions. The intermediate commander recommended approval.

k. On 16 March 2020, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12c(2) for commission of a serious offense. He would be issued a general, under honorable conditions discharge.

l. On 8 April 2020, he was discharged from active duty. His DD Form 214 shows he was discharged under the provisions of Chapter 14-12c, AR 635-200 with a general, under honorable conditions characterization of service. He completed 1 year, 11 months, and 2 days of active service with no lost time. He was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct, (serious Offense)," 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
- Certificate of Achievement

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

6. 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.

7. In reaching its determination, the Board can consider the applicants 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 misconduct (arrested and charged for DUI). As a result, his 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, the applicant provided insufficient evidence of post-service achievements or letters of reference in support of a clemency determination. 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.

b. Narrative Reason for Separation: Deny. The narrative reason for separation is governed by specific directives. The applicant was discharged under the provisions of paragraph 14-12c, AR 635-200. The narrative reason specified by Army Regulations for a discharge under this paragraph for an enlisted Soldier is "Misconduct" and the separation code is "JKQ." AR 635-8, Separation Documents, governs preparation of the DD Form 214 and dictates that entry of the narrative reason for separation, entered in block 28, and separation code, entered in block 26, of the form, will be entered exactly as listed in tables 2-2 or 2-3 of AR 635-5-1, Separation Program Designator Codes. Since the underlying reason for the applicant's separate is his misconduct, the Board

determined that the reason for discharge listed on his DD Form 214 is proper and equitable and there is no reason to change it.

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, 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.

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/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//