

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 October 2024

DOCKET NUMBER: AR20240001512

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

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

- DD Form 149 (Application for Correction of Military Record) 21 December 2023
- letter of support, RC\_\_\_\_, 4 December 2023
- letter of support, DR\_\_\_\_, 11 December 2023

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 needs his upgrade to get more benefits to buy a new home. The applicant provides:

a. A letter of support from R.C., noting he is a hard worker with pure character. Anything asked of him will be done instantly and without complaint. It is rare to meet people of such exceptional character.

b. A letter of support from D.R., noting he is hardworking, responsible and a genuinely nice person. He cleans the classrooms after school, and he does what he can with the best attitude. He is a dependable working professional.

4. A review of the applicant's service records show:

a. On 5 March 1987, he enlisted in the Regular Army for 4 years. He attained the rank/grade of private first class (PFC)/E-3.

- b. On 19 October 1988, he was counseled for not meeting weight standards.
- c. On 24 October 1988, a flag was imposed against him for not being in conformance with weight standards.
- d. On 16 December 1988, he accepted field grade nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for being drunk and disorderly on 27 September 1988. His punishment consisted of reduction to private 2/E-2, suspended for 3 months; forfeiture of \$376.00 pay for 1 month; and 45 days of extra duty. He did not appeal this punishment.
- e. A military police report number [REDACTED], dated 12 March 1989, shows the applicant was the subject of an investigation establishing that on 12 March 1989 he threw a rock through a windshield, damaged a privately owned vehicle, and then fled the area, resisted apprehension by military police, assaulted a military policeman, attempted unlawful entry, was placed in custody, and later released to his unit. This report contains a statement by the investigator, statements of witnesses, an alcohol influence report, and an evidence and property custody document.
- f. On 16 March 1989, a bar to enlistment certificate was approved and imposed against him for failure to meet weight standards and unsatisfactory progress for 2 consecutive months.
- g. On 12 April 1989, supplemental NJP under provisions of Article 15 of the UCMJ, was imposed against him for drunk and disorderly conduct, damage to personal property, attempted unlawful entry, assault on a military policeman, disrespect to a noncommissioned officer and aggravated assault. He was reduced to E-2.
- h. On 21 April 1989, he accepted field grade NJP under provisions of Article 15 of the UCMJ for, resisting apprehension by a military policeman, damaging personal property, attempting to climb over a fence, assaulting a military policeman, and attempting to assault a sergeant with a plunger, on 12 March 1989. His punishment consisted of reduction to private/E-1, forfeiture of \$300.00 pay per month for 2 months and 45 days of extra duty and restriction. He did not appeal this punishment.
- i. On 14 July 1989, he underwent a medical examination and gave a report of medical history. He noted he was in good health and the examining physician noted he was qualified for chapter processing for separation.
- j. On 3 August 1989, his company commander notified him of his intent to initiate separation action against him under Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, for patterns of misconduct, he advised him of his rights, and was recommended to receive a general, under honorable

conditions discharge. The applicant was notified that the separation authority could direct his service be characterized as under honorable conditions or honorable. He further notified him:

- he may consult with consulting military counsel or obtain civilian counsel at his own expense
- he may submit written statements in his own behalf
- he may obtain copies of the documents that would be sent to the separation authority supporting the proposed separation

h. On the same date, his company commander recommended his separation for a pattern of misconduct. He noted the applicant had two instances of NJP imposed against him and he had been counseled for his drinking problem on 11 April 1989.

i. On 4 August 1989, he acknowledged receipt of his commander's separation notification. He requested consulting counsel and he elected to submit statements in his own behalf. He understood that he may expect to encounter substantial prejudice in civilian life if a discharge general, under honorable conditions was issued to him. He further understood that if he received a general, under honorable conditions characterization of service, he could submit an application to the Army Discharge Review Board or the Army Board for Correction of Military Records for upgrade of his discharge however, an act of consideration by either board did not imply that his discharge would be upgraded.

j. On 8 August 1989, his intermediate commander recommended approval of his separation for misconduct and that he be given a general, under honorable conditions characterization of service.

k. On 9 August 1989, the separation authority approved and ordered the applicant's discharge under provisions of Army Regulation 635-200, Chapter 14, for patterns of misconduct, and directed issuance of a General Discharge Certificate, and that he not be transferred to the Individual Ready Reserve.

l. On 13 September 1989, the applicant was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions Army Regulation 635-200, paragraph 14-12b, by reason of misconduct-pattern of misconduct, with a under honorable conditions (general) characterization of service (Separation Code JKM, Reenlistment Code 3). He completed 2 years, 6 months, and 9 days of net active service during this period with no time lost. He was awarded or authorized Army Service Ribbon, Overseas Service Ribbon, Marksman Marksmanship Qualification Badge with Rifle Bar (M-16), and Expert Marksmanship Qualification Badge with Grenade Bar.

5. There is no evidence showing he applied to the Army Discharge Review Board for an upgrade of his discharge within the 15 year statute.

6. 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 displayed a pattern of misconduct (multiple NJPs, bar to reenlistment, multiple incidents of a discreditable nature). As a result, his chain of command initiated separation action against him. He was accordingly discharged with an under honorable conditions (general) characterization of service. The Board found no error or injustice in his separation processing. Additionally, although he provides two letters of support that speak of his post discharge character and hard work, the Board found such letters do not outweigh the misconduct for which he was discharged and that a general discharge is appropriate in his case. 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 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, convictions by civil authorities, and abuse of illegal drugs. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator JKM corresponded to the narrative reason "Misconduct-Pattern of Misconduct," and the authority, Army Regulation 635-200, Chapter 14-12b.

4. 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), on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also

applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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//