

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 December 2024

DOCKET NUMBER: AR20240002187

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

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

- DD Form 149 (Application for Correction of Military Record)
- 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, in effect:

a. Although he took full responsibility for his actions, at the time he was discharged in 2005, the United States Army did not have the provisions for preventing or reporting toxicity in leadership or hazing without reprisal. He had underlying issues with his command during this tenure, to include the inability to formally request review by the Inspector General of the companies he was assigned to, without being threatened by his immediate supervisors.

b. His reasons for needing this type of support were not limited to his command "unofficially" verbally directing him to file for divorce, sign over custody of his children, file for bankruptcy, anonymously attempting to have his children removed by the Department of Children and Family Services, not allowing him to attend professional development, obtain broadening or additional skills, or deployment to Iraq on multiple occasions because "the Command cannot guarantee that your wife will pay your bills while you're gone". The unit went so far as to revoke his Security Clearance without his knowledge for bankruptcy when he never once or since filed.

3. The applicant provides a copy of his DD Form 214 which reflects he was discharged on 8 August 2005, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12b, misconduct, separation code JKA, and reenry code 3. He served 2 years, 4 months, and 6 days of net active service this period.

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

a. He enlisted in the Regular Army on 3 April 2003.

b. He accepted nonjudicial punishment (NJP) on:

- 15 October 2004, failed to go at the time prescribed to his appointed place of duty on three separate occasions – on or about 31 August 2004, 2 September 2004, and 20 September 2004; he was reduced to private first class (suspended), to be automatically remitted if not vacated before 15 April 2005
- date unknown, the suspension of the punishment of reduction to private first class imposed on 15 October 2004 was vacated based on the applicant's failure to obey a lawful order issued by the first sergeant on or about 9 December 2004
- 14 April 2005, failed to go at the time prescribed to his appointed place of duty on or about 1 April 2005; he was reduced to private (E-2)

c. On 24 June 2005, the applicant's immediate commander notified the applicant 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, for patterns of misconduct. Specifically, since his arrival to 100th Engineer Company he had been counseled numerous of times on the importance of being punctual yet he was continuously late for formations.

d. The applicant acknowledged receipt of the commander's intent to separate him. On 27 June 2005, he consulted with legal counsel who advised him of the basis for the contemplated separation action for misconduct, the type of discharge he could receive and its effect on further enlistment or reenlistment, the possible effects of this discharge, and of the procedures/rights available to him. He elected to submit a statement in his own behalf; however, the case separation file is void of the statement. He acknowledged he:

- understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him
- understood he could be ineligible for many or all benefits as a veteran under Federal and State laws as a result of the issuance of a discharge under other than honorable conditions

- understood if he received a discharge characterization of less than honorable, he could make an application to the Army Discharge Review Board (ADRB) or the ABCMR for an upgrade, but he understood that an act of consideration by either board did not imply his discharge would be upgraded

e. Subsequent to this acknowledgement and consultation with counsel, his immediate commander initiated separation action against him due to a pattern of misconduct, in accordance with AR 635-200, chapter 14-12b. His chain of command recommended approval.

f. On 13 July 2005, the separation authority approved the applicant's discharge under the provisions of AR 635-200, paragraph 14-12b, patterns of misconduct, with his service characterized as general under honorable conditions.

g. The applicant's DD Form 214 shows he was discharged on 8 August 2005, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12b, misconduct, separation code JKA, and reentry code 3. He served 2 years, 4 months, and 6 days of net active service this period.

5. There is no evidence that the applicant applied to the Army Discharge Review Board for an update of his discharge.

6. AR 635-200 states action will be taken to separate a member for a pattern of misconduct. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

7. The Board should 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 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. Based upon the pattern of misconduct leading to the applicant's separation and the lack of mitigation or post-service character evidence provided by the applicant, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's 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.

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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, USC, section 1552(b), provides that applications for correction of military records must be filed within three years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the three-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. Paragraph 3-7a states 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. Paragraph 3-7b states 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, of the version in effect at the time, 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, and convictions by civil authorities. It provided that 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 was normally appropriate for a Soldier discharged under this chapter. However, the separation authority could direct an honorable discharge if 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/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. 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. 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//