

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 November 2024

DOCKET NUMBER: AR20240002740

APPLICANT REQUESTS: upgrade of his under honorable conditions (general) discharge

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

DD Form 149 (Application for Correction of Military Record)

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, he would like his discharge upgraded to honorable because of the circumstances as to why he was issued an under honorable conditions (general) discharge. The incident leading to his discharge, while understood by Army standards and discipline, were committed by him because of the birth of his children. He had no leave time saved and as their father, he determined the mission of being a Soldier first before anything or anyone on the natural earth was less important than to be a father and see his children, after they were born. While his punishment and all repercussions were just, unbiased, and fulfilled every requirement, all documentation and records were strict and accountably aligned with the Uniform Code of Military Justice (UCMJ), but he committed no other infractions.
3. The applicant's service record contains the following records:
 - a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Regular Army and entered active duty on 29 September 1999.
 - b. DA Form 4856 (Developmental Counseling Form) show he was counseled on:

(1) 19 June 2001, for being out of ranks at accountability formation. The applicant agreed with the counseling and signed the form.

(2) 20 June 2001 for being out of ranks at accountability formation. The applicant agreed with the counseling and signed the form.

(3) 22 June 2001, for being out of ranks at accountability formation. The applicant agreed with the counseling and signed the form.

(4) 28 June 2001 for not being at his place of duty and failing to relieve the charge of quarters (CQ). He agreed with the counseling and signed the form.

(5) 28 June 2001, for misinforming Soldiers, taking personal calls on CQ, for lying to a noncommissioned officer, and for sleeping on CQ. The applicant agreed with the counseling and signed the form.

(6) 1 August 2001, for disobeying a lawful order and failing to be at his place of duty. The applicant agreed with the counseling and signed the form.

(7) 17 August 2001, for being out of ranks. The applicant agreed with the counseling and signed the form.

(8) 17 August 2001, for sleeping while on duty. The applicant agreed with the counseling and signed the form.

(9) 3 December 2001, for failing to report on time. The applicant agreed with the counseling and signed the form.

(10) 3 December 2001, for failing to follow instructions. The applicant agreed with the counseling and signed the form.

(11) 11 January 2002, for failing to report to accountability formation. The applicant agreed with the counseling and signed the form.

(12) 15 January 2002, for failing to report to formation. The applicant agreed with the counseling and signed the form.

(13) 10 February 2002, for being late for correctional training. The applicant agreed with the counseling and signed the form.

(14) 16 February 2002, for being drunk on duty. The applicant agreed with the counseling and signed the form.

(15) 4 March 2002, for failing to be at his appointed place of duty and failing to be contacted. The applicant agreed with the counseling and signed the form.

(16) 28 August 2002, for failing to report to battery alert. The applicant agreed with the counseling and signed the form.

(17) 4 September 2002, for failing to report. The applicant agreed with the counseling and signed the form.

c. DA Forms 4187 (Personnel Actions) show his duty status was changed from failure to report to absent without leave (AWOL) on 3 January 2002 and from AWOL to present for duty on 8 January 2002.

d. On 23 January 2002, the applicant received a General Officer Memorandum of Reprimand (GOMOR) for driving while intoxicated on 10 January 2002. He submitted a field sobriety test, which he failed. A breath analysis test determined his blood alcohol to be .135 percent. On 21 August 2002, he acknowledged receipt of the GOMOR. The applicant's chain of command recommended the GOMOR be filed in his Official Military Personnel File (OMPF). On 1 October 2002, the GOMOR issuing authority directed the GOMOR be filed in his OMPF.

e. DA Forms 2627 (Record of Proceedings Under Article 15, UCMJ) shows he accepted nonjudicial punishment on:

(1) 9 February 2002 for being AWOL from on or about 3 January 2002 through on or about 8 January 2002. His punishment included reduction to the rank of private first class (PFC), suspended; forfeiture of \$200; and extra duty for 14 days. He did not appeal his punishment.

(2) 18 December 2002 for failing to go to his appointed place of duty. His punishment was reduction to the rank of PFC, suspended; forfeiture of \$200, suspended; extra duty for 14 days; and restriction for 7 days. He did not appeal his punishment.

f. DA Form 3822 (Mental Status Evaluation), 27 March 2003, shows the applicant has the mental capacity to understand and participate in the proceedings, was mentally responsible, met retention requirements, and was psychiatrically cleared for administrative action deemed appropriate by command.

g. The initiation of separation is not available for the Board's review; however on 2 April 2003, the applicant consulted with legal counsel and was advised of the basis for his separation and the procedures and rights that were available to him. He waived consideration of his case by an administrative separation board and personal

appearance before an administrative separation board so long as he received a discharge characterization no less favorable than under honorable conditions (general).

h. The applicant's chain of command recommended approval of his separation with an under honorable conditions (general) discharge. On 11 April 2003, the appropriate approval authority approved his separation and issued him an under honorable conditions (general) discharge.

i. On 21 May 2003, the applicant was discharged accordingly. He had completed 3 years, 7 months, and 18 days of active-duty service. He was discharged for misconduct with an under honorable conditions (general) characterization of discharge. His separation code was JKA and his reentry code was 3. He had lost time from 3 January 2002 to 7 January 2002. He was awarded or authorized the National Defense Service Medal, Army Service Ribbon, and Overseas Service Ribbon.

j. On 14 January 2011, the Army Discharge Review Board (ADRB), made a decision regarding the applicant's request to upgrade his discharge. The ADRB stated after careful review of his application, military records, and all other available evidence, they determined he was properly and equitably discharged. Accordingly, his request for a change in the character and/or reason of his discharge was denied.

4. Soldiers are subject to separation under the provisions Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, for misconduct. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct an under honorable conditions (general) discharge if such is merited by the overall record.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's request and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the applicant's misconduct. The Board noted, the applicant provided insufficient evidence of post-service achievements or character letters of support for the Board to weigh a clemency determination. The Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period.

2. The Board noted, the applicant was discharged for unsatisfactory performance and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Therefore, the Board denied relief.

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 (AR) 635-200 (Active Duty Enlisted Administrative Separations), 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. 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 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 was normally considered appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code JKA is used for discharge for patterns of misconduct.

4. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

6. On 25 August 2017 the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

7. 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 on the basis of 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//