

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 October 2024

DOCKET NUMBER: AR20240002851

APPLICANT REQUESTS: an upgrade of his U.S. Army Reserve (USAR) discharge from under honorable conditions (general) to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 30 November 2003
- DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States), 23 December 2002
- Orders 06-234-0002, 22 August 2006
- driver's license

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 was young and did not have reliable transportation to his USAR unit. He submitted paperwork to go Regular Army and he never received a reply. If he was able to join today, he would without hesitation.
3. On 23 December 2002, the applicant enlisted in the USAR for a period of 8 years, in the rank/pay grade of private (PV1)/E-1.
4. His records are void of the specific facts and circumstances leading to his discharge. However, orders 06-234-0002, issued by 63rd Regional Readiness Command on 22 August 2006, show he was discharged from the USAR in accordance with Army Regulation (AR) 135-178 (Army National Guard and Army Reserve - Enlisted Administrative Separations), effective 21 September 2006 with an under honorable conditions (general) discharge.

5. The applicant additionally provides his driver's license.
6. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in view of published guidance on equity, injustice, or clemency.

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 applicant's records are void of the specific facts and circumstances leading to his discharge. However, orders issued by 63rd Regional Readiness Command on 22 August 2006, show he was discharged from the USAR in accordance with AR 135-178, effective 21 September 2006 with an under honorable conditions (general) discharge. Without a separation packet or the specific reason for the separation, the Board presumes administrative regularity, i.e., what the Army did was correct. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of 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.

10/31/2024

X

CHAIRPERSON

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 135-178 (Army National Guard and Army Reserve – Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted Reserve Component personnel.

a. Paragraph 2-9a provides that an honorable characterization of service is appropriate when the quality of the Soldier'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 2-9b provides that a general (under honorable conditions) characterization of service is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military 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/NR) 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, 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//