

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 December 2024

DOCKET NUMBER: AR20240003241

APPLICANT REQUESTS:

- upgrade of his character of service from under honorable conditions (general) to honorable,
- additional awards not shown on his DD Form 214 (Certificate of Release or Discharge from Active Duty),
- and a personal appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record), 30 January 2024
- self-authored statement

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 is requesting a discharge of honorable so he can right the wrong and not have his time in service tarnished by his mistake. While serving, his then spouse, wrote several worthless checks and created several credit problems. Due to his spouse writing so many worthless checks, when he attempted to purchase a vehicle, a specific check bounced, and it resulted in him being arrested. He ended up getting a divorce, since then his financials have been corrected. He has had great success in his personal and professional life, worked as an environment manager for two drilling companies, and his current positions of Emergency Management Agency Director/County Fire Chief. He was proud of the time he served in the Army.
3. The applicant enlisted in the Regular Army on 3 August 1989, for a 4-year period. He extended his enlistment on 16 April 1993, for an additional 6 months. He was awarded the military occupational specialty of 75C (Personnel Management Specialist). The highest rank he attained was specialist/E-4.

4. On 18 July 1994, the applicant accepted non-judicial punishment, under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ), for uttering a dishonorable check on or about 28 May 1994. His punishment imposed was restriction for 14 days and extra duty for 14 days.

5. On 28 September 1994, the applicant's immediate commander notified the applicant of the intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12b, for Pattern of Misconduct. The commander noted as the specific reasons: the applicant's summarized Article 15 for uttering worthless checks on 18 July 1994, his counseling on 28 June 1994 for uttering worthless checks, an additional counseling on 9 July 1994 for failing to attend a check writing class, and his apprehension by the Civil Liaison on 4 May 1994 for uttering a worthless check in the amount of \$2,000.00. Further recommending the applicant receive a under honorable conditions (general) discharge.

6. On 11 October 1994, the applicant acknowledged receipt of the notification for separation and consulted with counsel. He was advised of the basis for the contemplated action to separate him and of the rights available to him. He understood he may expect to encounter substantial prejudice in his civilian life, and elected to submit a statement in his own behalf.

a. His statement submitted on his own behalf, requested his Command take one of three avenues, to which he proposed, for resolving the matter of his discharge. He first requested to be allowed to have a rehabilitation transfer, secondly if a rehabilitation transfer was disapproved, he requested another chance within his unit, and thirdly if he been disapproved both previous recourses, he requested an honorable discharge.

b. He realized the mistakes he made, stated they were personal mistakes which effected his duty performance, and felt although he was trying to make changes, he believed his command scrutinized him more because of his financial mistakes. He believed his future was bright and other than his financial blip he had a great career.

c. By requesting a rehabilitative transfer, he believed it would give him a new fresh start. He believed the Army would not have been passing another Soldier on to another Command, but allowing a Soldier, the applicant, to change in an environment not as hostile as the environment he was in.

d. Lastly, he requested an honorable discharge. He had served in the Army for 5 years and being issued an under honorable conditions (general) discharge would be painful for him. He believed his service to the nation while in the Army was impeccable although he financial issue. He believed he served with honorable and requested an honorable discharge.

7. On 12 October 1994, the applicant's immediate commander formally recommended his separation, under the provisions of AR 635-200, paragraph 14-12b. His intermediate commander's recommended approval of his separation with issuance of an under honorable conditions (general) discharge, on the same date.

8. On 19 October 1994, the separation authority directed the applicant be separated under the provisions of AR 635-200, paragraph 14-12b, and issued an under honorable conditions (general) discharge.

9. The applicant was discharged on 7 November 1994, under the provisions of AR 635-200, paragraph 14-12b, by reason of misconduct, in the grade of E-4. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he received an under honorable conditions (general) character of service, with separation code JKA, and reentry code of 3. He was credited with 5 years, 3 months, and 5 days of net active service with no time lost. He was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

- Army Achievement Medal (2nd award)
- Army Good Conduct Medal
- National Defense Service Medal
- Noncommissioned officer's Professional Development Ribbon
- Army Service Ribbon
- Gold German Army Marksmanship Badge

10. During the processing of this case, the Criminal Investigation Division sent a redacted report to the ABCMR on 22 October 2024, showing the applicant was issued a bench warrant for issuing worthless checks on 1 February 1994.

11. A thorough review of the applicant's record and the Army's unit award database failed to reveal evidence showing the applicant is entitled to any additional awards or decorations.

12. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200, Chapter 14, for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

13. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

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 any mitigation for such misconduct, as well as the lack of evidence related to missing awards on the applicant's DD Form 214, the Board concluded there was insufficient evidence of an error or injustice warranting any change to the applicant's military record.

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.

3/17/2025

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set 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 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for 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. 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//