

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 October 2024

DOCKET NUMBER: AR20240003295

APPLICANT REQUESTS: upgrade of his under honorable conditions (general) discharge to honorable and 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)
- 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, he does not believe that his performance was bad enough to have received an under honorable condition (general) discharge. He did develop issues but being in the food services made it more difficult being around food all the time. He believes that with the right guidance he could have stayed in the Army but he did not have the opportunity to better himself. He was not aware he could request an upgraded discharge.
3. The applicant's service record contains the following documents:
  - 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 30 June 1994.
  - b. Memorandum weight control program, 1 February 1994, informed him he was enrolled into the overweight program and had been flagged.
  - c. Memorandum administrative flag shows a flag was requested to be initiated for the applicant for Army Physical Training Test (APFT) failure effective 14 July 1995.

d. Memorandum administrative flag shows a flag was requested to be initiated for the applicant for being enrolled in the overweight program effective 26 July 1994.

e. DA Form 705 (APFT Scorecard) shows he took a record APFT on 13 July 1995 and failed the run event of the APFT and on 12 October 1995 and failed the pushup and run events of the APFT.

f. Memorandum administrative flag shows a flag was requested to be initiated for the applicant for chapter action.

g. DA Forms 4856 (General Counseling Form) show the applicant was counseled:

- 13 July 1995, for failing to meet Army body composition/weight control standards. The applicant concurred with the counseling and signed the form.
- 13 July 1995, for failing the APFT. The applicant concurred with the counseling and signed the form.
- 22 October 1995, for not having a phone and having his phone disconnected. The applicant concurred with the counseling and signed the form.
- 22 October 1995, for missing movement and failing to report for movement to Fort Gordon, Georgia. The applicant concurred with the counseling and signed the form.
- 23 October 1995, for failing to report to two formations. The applicant concurred with the counseling and signed the form.
- 30 October 1995, notification of initiation of separation. The applicant concurred with the counseling and signed the form.

h. DA Form 2627 (Record of Proceeding Under Article 15, Uniform Code of Military Justice) shows he accepted nonjudicial punishment, in the rank of private first class (PFC), 24 October 1995, for failing to go to his appointed place of duty on two occasions and for missing movement. His punishment included reduction to the rank of private/E2, 14 days of extra duty, and forfeiture of \$232 suspended. He did not appeal his punishment.

i. SF Form 88 (Report of Medical Examination), 1 November 1995, shows he was medically qualified for separation. SF Form 93 (Report of Medical History), 1 November 1995, shows he suffered from depression and excessive worry.

j. DA Form 3822 (Report of Mental Status Evaluation) shows he had the mental capacity to understand and participate in the proceedings, was mentally responsible, and met the retention requirements of separation. He was psychiatrically cleared for any administrative action deemed appropriate by command.

k. On 15 December 1995, the applicant's commander initiated separation action to separate him for unsatisfactory performance. The reason for the commander's proposed action was he failed two consecutive APFTs, was a weight control program failure, and he received an Article 15. The commander was recommending he receive an under honorable conditions (general) discharge. The separation authority was not bound by the commander's recommendation as to characterization of service. On the same day, the applicant acknowledged receipt of the initiation of separation and stated he waived his right to consult with consulting counsel, to provide written statements in his own behalf, to receive copies of documents that would be sent to the separation authority supporting the separation, and to a hearing before an administrative board if he had six or more years of active and reserve military service.

l. The applicant's chain of command recommended approval of the separation with an under honorable conditions (general) discharge. On 21 December 1995, the appropriate approval authority approved the separation and directed he be issued an under honorable conditions (general) discharge.

m. On 9 January 1996, he was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged in the rank of PFC, in accordance with chapter 13 of AR 635-200. He had completed 1 year, 6 months, and 10 days of active duty service. He was discharged for unsatisfactory performance, his character of service was under honorable conditions (general), his separation code was LHJ and his reentry code was 3. He was awarded or authorized the: National Defense Service Medal, Army Service Ribbon, and Sharpshooter Badge M-16 Rifle.

4. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

#### BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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's commander determined that the applicant's performance fell below standards as evidenced by his consecutive APFT

failures, and receipt of NJP. As a result, his chain of command initiated separation action against him for unsatisfactory performance and he received a general, under honorable conditions discharge. The Board found no error or injustice in his separation processing. Also, the applicant provided insufficient evidence of a persuasive nature of post-service achievements or letters of reference in support of a clemency determination. Therefore, 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.

	10/31/2024
X	■
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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 15–185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR will decide cases based on the evidence of record. It is not an investigative agency.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. An honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when the Soldier's subsequent honest and faithful service over a greater period outweighed the disqualifying entries found in his/her record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Chapter 13 provides:

(1) Commanders could initiate separation action against Soldiers when, in the commanders' judgment:

- they would not develop sufficiently to participate in satisfactorily in training and/or become satisfactory Soldiers;

- the seriousness of the circumstances was such that the Soldier's retention would have an adverse impact on the military discipline, good order, and morale; and
- it was likely the Soldier would continue to be disruptive influences in present and future assignments
- it was likely that the circumstances forming the basis for initiation of separation procedures would continue or recur
- the ability of the Soldier to perform duties effectively in the future, including potential for advancement or leadership was unlikely

(2) Prior to the initiation of separation action, the regulation stipulated that commanders ensure Soldiers had received adequate counseling and rehabilitation. The regulation pointed out that military service was a calling different from any civilian occupation, and as such, commanders were not to consider separation solely due to unsatisfactory performance unless the leadership had made efforts to rehabilitate the Soldiers.

(3) The regulation permitted separation authorities to furnish Soldiers separated under this provision with either an honorable or a general discharge under honorable conditions.

4. 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 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. 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//