

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 November 2024

DOCKET NUMBER: AR20240003396

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 is a 58-year-old union worker with no criminal record. He is a Mechanical Engineer Heating, Ventilation and Air Conditioning (HVAC), and Plumber. He also worked for Veteran Administration (VA) helping veterans. He is a proud father and he hopes and prays that his general discharge can be upgraded. He always trusts in God. He states he has lived long enough with the embarrassment. Army Pride!
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 25 August 1983.
 - b. He served in Germany from 17 March 1985 to 12 November 1986.
 - c. He accepted nonjudicial punishment (NJP) for wrongful use of marijuana:
 - on 24 December 1985 for the period 19 August 1985 to 29 August 1985; reduced to private first class (PFC)/E-3
 - on 21 May 1986 for 19 January 1986 to 29 January 1986; reduced to private (PVT)/E-2

d. On 8 October 1986, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 9, paragraph 9-2 Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) for unsatisfactory performance. The specific reasons for his proposed recommendation were based upon his failure to rehabilitate from the use of marijuana, a scheduled controlled substance. He acknowledged the same day.

e. On 9 October 1986, after consulting with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if an under other than honorable conditions discharge is issued to him
- he may apply to the ADRB or the ABCMR for upgrading
- he will be ineligible to apply for enlistment in Army for a period of 2 years after discharge

f. The immediate commander-initiated separation action against the applicant for misconduct. He recommended that his period of service be characterized as under honorable conditions (General).

g. Consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 9, AR 635-200, and paragraph 9-2 and directed he be issued an under honorable conditions (General) discharge.

h. On 13 November 1986, he was discharged from active duty with an under honorable conditions (General) characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 years, 2 months, and 19 days of active service. He was assigned separation code JPC and the narrative reason for separation is listed as "Drug Abuse Rehabilitation Failure." It also shows he was awarded or authorized the:

- Army Service Ribbon
- Marksman Marksmanship Qualification Badge with Rifle Bar

4. On 12 May 1988, the Army Discharge Review Board (ADRB) Docket AD 87-04369 reviewed the applicant's request for an upgrade to his discharge. The Board found the applicant's discharge proper and equitable. The ADRB denied his request for an upgrade of his discharge.

5. By regulation, action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

6. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

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 Department of Defense guidance for liberal consideration of discharge upgrade requests. The evidence of record shows the applicant's commander declared him a drug abuse rehabilitation failure and he was discharged from active duty due to drug abuse rehabilitation failure with an under honorable conditions (General) discharge. The Board found no error or injustice in his separation processing. The applicant provided no evidence of post-service achievements or letters in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the characterization 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.

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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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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 (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

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.

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 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.

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//