

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 November 2024

DOCKET NUMBER: AR20240003917

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions 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 in the 26 years since separation from the Army, he has demonstrated the attributes of a highly productive citizen. He has grown tremendously on a personal level, as well as professionally. Since then, he has remained gainfully employed as a truck driver and have obeyed all the regulations pf being an over-the-road trucker. Currently, he has 6000 standing with FMCSA and Department of Homeland Security, along with a valid hazardous materials endorsement on his driver's license. No criminal cases in 20 plus years.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 6 August 1993. He held military occupational specialty 31R (MSE Transmission System Operator). He was assigned to Fort Campbell, KY. His record contains several counseling statements for a variety of infractions, including:
 - Repeated failure to report
 - Delinquent financial debts/payments
 - Repeated disrespect
 - Larceny of credit card/government property, stealing mail, shoplifting
 - Soliciting others to commit an offense

- Driving on an expired license
- Domestic dispute, assault on his fiancé and arrest for assault
- Sick call malingering
- Failure to follow instructions and poor attitude

b. On 14 May 1996, he was arrested by Military Police (MP) for driving on a suspended license.

c. On 3 September 1996, his commander initiated a Bar to Reenlistment Certificate against him citing his multiple nonjudicial punishment (20 August, 27 August, and 29 August 1996, all for failure to pay debt or returned check). The commander stated [Applicant] has a history of misconduct including failure to follow instructions, driving on a suspended license, lying, being late to formations, and other infractions.

d. The applicant was furnished with a copy of this bar, but he elected not to submit a statement. The approving authority approved his bar, and later reviewed and kept it in place.

e. On 6 December 1996, a Military Police investigation revealed that the applicant was observed removing (1) bottle of cologne, concealing it on his person, and departing the Post Exchange. He was apprehended and transported to the MP station where he was advised of his legal rights, processed, and released to his unit.

f. Around April 1997, the applicant was issued a restraining order by a civil court due to domestic violence.

g. On 1 May 1997, the applicant underwent a mental status evaluation that determined he had the mental capacity to understand and participate in these proceedings. He met retention standards of Army Regulation (AR) 40-501 (Standards of Medical Fitness) and was psychiatrically cleared for administrative actions.

h. On 7 May 1997, the applicant was reported in an absent without leave (AWOL) status. He returned to military control on 9 May 1997.

i. On 14 May 1997, the applicant's immediate commander notified him of his intent to initiate separation action against him under chapter 14-12b of Army Regulation (AR) 635-200 (Personnel Separations) for his pattern of misconduct. The commander recommended a general discharge. The specific reasons are cited as: repeated failure to report to his appointed place of duty at the times prescribed, his inability to pay his just debts, he was arrested for spousal abuse by the civilian authorities, he was caught shoplifting from the PX and he was AWOL from 7 May 1997 to 9 May 1997.

j. On 21 October 1985, the applicant acknowledged receipt of the commander's notification. He consulted with counsel who advised him of his rights. He acknowledged he was advised of the basis for the contemplated separation under the provisions of AR 635-200, paragraph 14-12b, its effects, of the rights available to him, and the effect of waiving any of his rights. He declined to submit statements in his own behalf. He requested consideration by, and appearance before, an administrative separation board. He understood he could expect to encounter substantial prejudice in civilian life he received a general under honorable conditions character of service and he also understood he could be deprived of many or all veterans, state, and federal benefits if he received an under other than honorable conditions character of service.

k. Following the applicant's acknowledgement and election of rights, the applicant's commander initiated separation action against him under provisions of AR 635-200, chapter 14-12b. The intermediate and senior commanders recommended approval with issuance of an under other than honorable conditions discharge.

l. On 25 July 1997, an administrative separation board convened to determine if the applicant should be separated.

(1) Conclusion: The administrative separation board, having carefully considered the evidence before it, concluded that despite attempts to rehabilitate or develop respondent as a satisfactory soldier, further effort is unlikely to succeed and/or rehabilitation is impractical, and the respondent is not amenable to rehabilitation measures.

(2) Findings: The case is appropriate for disposition within the criteria of AR 635-200, Section III, Paragraph 14-12 and that all of the allegations contained in the Chapter 14 packet are supported by a preponderance of the evidence. The applicant has repeatedly failed to report to his place of duty at the times prescribed, failed to pay his just debts, and was arrested for spousal abuse by civil authorities. He was caught shoplifting. and he was AWOL for two days.

(3) Recommendation: That the respondent be discharged from the service because of a pattern of misconduct, with issuance of a Discharge Under Other Than Honorable Conditions.

m. On 31 July 1997, the convening authority/separation authority approved the administrative separation board's findings and recommendations and directed the applicant's separation under the provisions of AR 635-200, chapter 14-12b, with an under other than honorable conditions characterization of service.

n. On 1 August 1997, the applicant was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635–200, chapter 14-12b with an under other than honorable conditions characterization of service, Separation Code JKA and Reentry Code 3. His DD Form 214 shows he completed 3 years, 11 months, and 6 days of active service. He was awarded or authorized the Army Achievement Medal, National Defense Service Medal, Army Service Ribbon, Air Assault Badge, and an M-16 marksmanship badge.

o There is no indication he petitioned the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. By regulation, Soldiers are subject to separation under the provisions of paragraph 14-12b of AR 635-200 for a pattern of misconduct or 14-12c for commission of a serious offense. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

6. In reaching its determination, the Board can consider the applicant's 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 Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for a pattern of misconduct. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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), in effect at the time, set forth the basic authority for the separation of enlisted personnel. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. 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 appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

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.

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. 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//