

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 January 2025

DOCKET NUMBER: AR20240004765

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) character of service
- a video/telephonic appearance before the Board

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

DD Form 149 (Application for Correction of Military Record)

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 taken advantage of because the misconduct that happened was not in his control. Things that happened were taken out of context. His chain of command did not have his back, and he was a young kid that was away from home.
3. The applicant enlisted in the Regular Army on 9 August 1989 for a 6-year period. Upon completion of initial entry training, he was awarded military occupational specialty 74D (Computer/Machine Operator). The highest rank he attained was private/E-2.
4. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on two occasions:
 - a. On 24 July 1990, for being drunk and disorderly, on or about 12 July 1990. His punishment consisted of reduction to private/E-1, suspended, to be automatically remitted if not vacated before 24 October 1990; and 14 days of extra duty.
 - b. On or about 21 September 1990, for being drunk and disorderly, wrongful damage of government property, drinking underage, and failure to identify, on or about

18 September 1990. His punishment consisted of forfeiture of \$84.00 pay, 14 days of extra duty, and 14 days restriction. The suspension of his reduction to private/E-1, imposed on 24 July 1990, was vacated.

5. A letter from Headquarters Company, U.S. Army Garrison, Fort Bragg, NC, dated 21 September 1990, noted the applicant was enrolled in the Army Alcohol and Drug Abuse Prevention and Control Program (ADACP) on 16 July 1990. Based upon the drunk and disorderly and drinking underage charges, he was now declared a rehabilitation failure.

6. The applicant was formally counseled on 24 September and 5 October 1990 for his drunk and disorderly conduct and failure to attend physical training formation.

7. The applicant's immediate commander notified the applicant on 14 January 1991 of his intent to initiate separation action against him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, for patterns of misconduct. The commander noted the applicant's two instances of drunk and disorderly conduct and failure to be at his appointed place of duty as specific reasons for the recommendation.

8. The applicant acknowledged receipt of the notification on the same date. Having been advised by his commander, he declined the opportunity to consult counsel and elected to submit statements in his own behalf. There is no statement available for review in the applicant's service record.

9. The applicant's commander formally recommended his separation from service under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of patterns of misconduct, with the issuance of an under honorable conditions (General) characterization of service. The commander further recommended a waiver of rehabilitative transfer.

10. Despite his previous declination, the applicant consulted with legal counsel on 15 January 1991. He was advised of the basis for the contemplated separation action and its effects; of the rights available to him; and the effect of waiving his rights. He acknowledged understanding he was not entitled to have his case heard by an administrative separation board unless he was being considered for an under other than honorable conditions character of service. He acknowledged understanding that he may be ineligible for many or all benefits as a Veteran under Federal and State laws, and he could expect to encounter substantial prejudice in civilian life as a result of the issuance of a general discharge. He elected to submit statements in his own behalf within seven duty days.

11. A memorandum for record from brigade legal, dated 28 January 1991, noted the applicant failed to submit statements in his own behalf within the permitted timeframe.

12. On 28 January 1991, the Staff Judge Advocate determined the separation proceedings were legally sufficient. Subsequently, the intermediate commander recommended approval of the separation action and a waiver of rehabilitative transfer.

13. The separation authority approved the recommend separation action on 30 January 1991, waived the rehabilitative transfer requirements, and directed the issuance of an under honorable conditions (General) characterization of service.

14. The applicant underwent a Mental Status Evaluation on 13 February 1991. The evaluating provider determined he was mentally responsible and had the capacity to understand and participate in proceedings. He waived the opportunity to undergo a physical examination.

15. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on two additional occasions:

a. On 14 February 1991, for failure to go at the time prescribed to his appointed place of duty, on or about 6 February and 13 February 1991. His punishment consisted of forfeiture of \$176.00 pay and seven days of extra duty.

b. On 27 February 1991, for failure to go at the time prescribed to his appointed place of duty, on or about 27 February 1991. His punishment consisted of forfeiture of \$176.00 pay, 14 days of extra duty, and 14 days restriction.

16. The applicant was discharged on 5 March 1991, under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of misconduct – pattern of misconduct. His DD Form 214 (Certificate of Release or Discharge from Active Duty), shows his characterization of service was under honorable conditions (General), with separation code JKM and reentry code RE-3. He completed 1 year, 6 months, and 27 days of active service. He was awarded or authorized the Army Service Ribbon and Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16).

17. Regulatory guidance provides when an individual is discharged under the provisions of Army Regulation 635-200, Chapter 14, by reason of misconduct, an under other than honorable conditions characterization of service is normally appropriate.

18. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. 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 misconduct with the commander citing two instances of drunk and disorderly conduct and failure to be at his appointed place of duty. 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.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|---|---|---|----------------------|
| : | : | : | 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.

4/10/2025

X [REDACTED]

CHAIRPERSON

[REDACTED]

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 Army Board for Correction of Military Records (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. The regulation provides 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 (Personnel Separations Enlisted Personnel), still in effect, sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. 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 merited by the Soldier's overall record.

b. Paragraph 3-7a provides that 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.

c. Paragraph 3-7b states 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.

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/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//