

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 February 2025

DOCKET NUMBER: AR20240005338

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions (general) to honorable and a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Character Letter D_K_, 5 April 2024
- Character Letter T_B_, 5 April 2024

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 requesting an upgrade of his discharge from general, under honorable conditions to honorable. He believes he would have had a much longer career in the military if it was not for his platoon sergeant picking on him.
3. The applicant provides two, character letters dated 5 April 2024, which attest to the applicant's character, work ethic, and willingness to assist others. They state he is always professional and courteous, and he is regarded as an invaluable, essential asset to the department where he works.
4. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 6 February 1997. The highest rank he held was private first class (PFC)/E-3.

b. The applicant received a general counseling (DA Form 4856) for being missing from duty on 29 September 1998.

c. On 3 April 1999, the applicant was apprehended by military police (MP) for driving with a suspended driver's license.

d. On 6 April 1999, the applicant's installation driving privileges were suspended.

e. On 12 April 1999, the applicant acknowledged receipt of the order suspending his installation driving privileges and requested an administrative hearing to determine whether his driving suspension should remain in effect or be vacated.

f. The applicant was counseled for the following:

- 7 April 1999 – driving with a suspended license
- 12 April 1999 – failure to be at the appointed place of duty

g. On 28 April 1999, he accepted nonjudicial punishment (NJP) under summarized Article 15, Uniform Code of Military Justice (UCMJ), for on or about 12 April 1999, absenting himself from his place of duty. His punishment included 14 days of extra duty.

h. The applicant was counseled for the following:

- 30 April 1999 – failure to report to 0630 formation
- 3 May 1999 – failure to report to 0630 formation
- 5 May 1999 – failure to report to duty
- 6 May 1999 – failure to report to 0800 formation
- 6 May 1999 – disobeying an order and disrespect to a noncommissioned officer (NCO)

i. On 17 May 1999, the applicant accepted NJP, under the provisions of Article 15, UCMJ, for the following misconduct:

- on or about 6 May 1999, willfully disobeying a lawful order from an NCO
- on or about 6 May 1999, failing to go at the time prescribed to his appointed place of duty
- on or about 5 May 1999, failing to go at the time prescribed to his appointed place of duty
- on or about 3 May 1999, failing to go at the time prescribed to his appointed place of duty
- on or about 30 April 1999, failing to go at the time prescribed to his appointed place of duty

j. His punishment included reduction to the grade of private (PV2)/E-2, forfeiture of \$200.00 pay, suspended, to automatically be remitted if not vacated before 15 August 1999, extra duty for 14 days, and restriction for 14 days.

k. A memorandum dated 17 May 1999, shows the applicant failed to appear at the appointed place and time for his installation driving privileges suspension hearing. His hearing was waived, and his installation driving privileges were revoked for one year from the date that his hearing was scheduled to take place.

l. The applicant was counseled for the following:

- 2 July 1999 – violation of Command Policy Letter Number 18, by having a visitor in his room without signing in with the charge of quarters
- 12 August 1999 – failure to report and sign in from leave
- 13 August 1999 – failure to report to first call, 0630 formation

m. On 24 August 1999, the applicant accepted NJP, under the provisions of Article 15, UCMJ, for the following misconduct:

- on or about 2 July 1999, violating a lawful general order, by wrongfully having visitors in his room without signing them in
- on or about 12 August 1999, dereliction in the performance of his duties by negligently failing to sign in off leave
- on or about 13 August 1999, failing to go at the time prescribed to his appointed place of duty, to wit: 0630 accountability formation

n. His punishment included reduction to the grade of private (PV1)/E-1, forfeiture of \$223.00 and restriction for 14 days, both suspended, to be automatically remitted if not vacated before 20 February 2000, and 14 days extra duty.

o. On 31 August 1999, the applicant's immediate commander notified the applicant of his intent to initiate separation actions against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 14-12b, by reason of pattern of misconduct. The commander informed the applicant he was recommending he receive a general, under honorable conditions discharge and explained his rights. The commander listed the following reasons for the proposed action:

- Article 15, dated 24 August 1999 for violating a lawful order, dereliction in the performance of duty, and failure to go the appointed place of duty
- Article 15, dated 17 May 1999 for disobeying a lawful order from an NCO and failure to go to appointed place of duty
- Article 15, dated 28 April 1999 for absent from place of duty

p. On 31 August 1999, the applicant acknowledged receipt of his commander's separation notification and after being advised by his consulting counsel of the basis for the contemplated action to separate him for pattern of misconduct under AR 635-200, chapter 14, paragraph 14-12b, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights.

(1) He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him.

(2) He did not submit statements in his own behalf.

(3) He further understood that, if he received a discharge certificate/character of service which was less than honorable, he may make application to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading; however, an act of consideration by either board did not imply that his discharge will be upgraded.

(4) He understood that he would be ineligible to apply for enlistment in the United States Army for a period of two years after discharge.

q. On an unspecified date, the applicant's immediate commander recommended approval of the separation under the provisions of AR 635-200, chapter 14, paragraph 14-12b, pattern of misconduct, with a general, under honorable conditions discharge. The intermediate commander echoed the immediate commander's recommendation.

r. On 13 September 1999, the separation authority approved the discharge and directed the applicant be issued a general, under honorable conditions discharge and not be transferred to the Individual Ready Reserve.

s. The applicant was discharged on 22 October 1999. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12b, misconduct, in the rank/grade of private (PV2)/E-2, and his service was characterized as under honorable conditions (general). He completed 2 years, 8 months, and 17 days of net active service during the covered period. Additionally, his DD Form 214 shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, Expert Marksmanship Qualification Badge with grenade bar, and Sharpshooter Marksmanship Qualification Badge with rifle bar
- Item 18 (Remarks): Member has completed first full term of service.
- Item 26 (Separation Code): JKA
- Item 27 (Reentry Code): 3

t. A memorandum dated 9 November 1999, shows the Chief, Transition Center, Headquarters, III Corps and Fort Hood, Fort Hood, TX, requested that the Director, National Personnel Records Center correct the applicant’s DD Form 214, as indicated:

- Item 4a (Grade, Rate, or Rank): from PV2 to PV1
- Item 4b (Pay Grade): from E2 to E1
- Item 12h (Effective Date of Pay Grade): 19990517 to 19990824

5. There is no indication the applicant applied to the ADRB for review of his discharge processing within that Board’s 15-year statute of limitations.

6. Regulatory guidance states when an individual is discharged under the provisions of Chapter 14, AR 635-200 for misconduct, an under other than honorable conditions characterization of service is normally appropriate.

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

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 lengthy pattern of misconduct leading to the applicant’s separation and the lack of any mitigation for such misconduct, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant’s characterization of service.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//
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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 (AR) 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 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. 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 considered appropriate.

However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, paragraph 14-12b for Misconduct-Pattern of Misconduct would receive a separation code of "JKA."

4. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification.

5. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

6. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

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.

//NOTHING FOLLOWS//