

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2025

DOCKET NUMBER: AR20240005447

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

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-Authored Statement

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 while he was in the military, he was young and dumb, there was no one else to blame for how he performed (or the lack of performance) while he was in the Army. He hated being told what to do, he didn't listen to those who tried to help him, and he was too immature to make the necessary changes to be successful in the Army. Since being chaptered, he has been in many leadership roles, and while performing his tasks as a leader he has seen how much of a challenge he was to his leaders in the military as he has led some challenging individuals, and now looking back on it he really learned a valuable lesson. He notes he has grown immensely not only professionally, but also mentally and spiritually. These maturities have really helped him see how much of a burden he placed on my leadership while in the Army, and though there is not anything he can do to go back and fix what has already been done. He would like consideration on the upgrade of his general, under honorable conditions discharge to an honorable discharge.

3. A review of the applicant's service record shows:

- a. He enlisted in the Regular Army on 21 July 1995.

b. On 6 October 1997, the applicant was given two general counseling for the following:

- Writing a worthless check without sufficient funds on 2 May 97 in the amount of \$130.00.
- being absent without leave (AWOL)

c. On 7 October 1997, the Exchange Service Dishonored Check Notification shows the applicant wrote five (5) worthless checks without sufficient funds to include a service charge of \$125.00, and \$2.00 bank fees for each check totaling \$246.68.

- | • Check # | Check Date | Check Amount |
|-----------|------------|--------------|
| • 0000154 | 22AUG97 | 13.35 |
| • 0000155 | 22AUG97 | 25.94 |
| • 0000156 | 24AUG97 | 35.95 |
| • 0000160 | 02SEP97 | 21.80 |
| • 0000161 | 04SEP97 | 14.64 |

d. On 28 October 1997, he accepted nonjudicial punishment for failure to go to the appointed place of duty at the prescribed time. His punishment included reduction to private (PVT)/E-1 and forfeiture of \$210.00 pay per month for one months.

- 28 August 1997
- 2 September 1997
- 6 October 1997

e. On 24 November 1997, the applicant was given a general counseling for failure to make a weekly/monthly payment to his loan.

f. On 10 December 1997, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 14, paragraph 14-12(b) Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) for patterns of misconduct. The specific reasons for his proposed recommendation were based upon his failure to pay just debts, disobeying a direct order, and failure to be at appointed place of duty. The applicant acknowledged receipt of the notification of separation action the same day.

g. 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 a discharge under other than honorable conditions is issued to him

- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he elected not to submit matters

h. The immediate commander initiated separation action against the applicant for patterns of misconduct. He recommended that his period of service be characterized as general, under honorable conditions. The intermediate commander recommended approval.

i. On 29 December 1997, a legal review was completed and found legally sufficient.

j. Consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 14, AR 635-200, paragraph 14-12b for patterns of misconduct on 18 January 1998. He would be issued a general, under honorable conditions discharge.

k. On 12 February 1998, 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 2 years, 6 months, and 22 days of active service. He was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct." It also shows he was awarded or authorized:

- National Defense Service Medal
- Army Service Ribbon

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. By regulation (AR 635-5), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

6. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as patterns of 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.

7. 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 misconduct with the commander citing failure to pay just debts, disobeying a direct order, and failure to be at appointed place of duty. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

6/6/2025

X 

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 635-5 (Separation Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

3. 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. 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. 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.

c. Chapter 14 of the regulation states 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.

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.

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//