

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 January 2025

DOCKET NUMBER: AR20240005812

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

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 a new commanding officer came in and possible personality conflict incurred. He unfortunately had a serious financial situation and was to be sent to instructional classes for assistance with his debt, which he was discharged instead. Everything was lost in a car accident.
3. The applicant enlisted in the Regular Army on 13 July 1988.
4. He received nonjudicial punishment under article 15 of the Uniform Code of Military Justice for on or about 7 May 1989, fail to go at the time prescribed to his appointed place of duty. He was reduced to the grade E-1 (suspended for 90 days until 18 September 1989).
5. On 12 July 1989, his commander was notified that he had been suspended of check cashing privilege indefinitely for writing thirteen non-sufficient fund checks at Army/Air Force Exchange Branches for a total of over \$1,100. He had four other dishonored check notifications on/in the amount of:
 - 15 June 1989 \$59.90
 - 20 June 1989 \$63.95
 - 18 June 1989 \$35.20

- 20 June 1989 \$64.15

6. On 1 February 1990, he underwent a mental evaluation. He was found entirely within normal limits without evidence of psychosis or major psychiatric disorder.

7. On 1 February 1990, his commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12c, for commission of a serious offense. The reason for his proposed action was he received several letters of indebtedness for failing to maintain funds in his checking account, continuously failing to be on time for formations and receiving numerous statements to that effect in addition to one article 15, he was also cited for driving a vehicle without any insurance, registration, or plates. He acknowledged receipt of notification on 6 February 1990.

8. On 6 February 1990, having been advised by consulting counsel of the basis for the contemplated action to separate him for commission of a serious offense under the provisions of AR 635-200, Chapter 14, and its effects; of the rights available to him; and the effect of any action taken by him in waiving his rights. He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him.

9. His commander recommended that he be separated from the Army prior to the expiration of his current term of service and that he receives a General Discharge Certificate.

10. On 12 February 1990, the separation authority approved separation under the provisions of AR 635-200, paragraph 14-12c and directed he receive a General Discharge Certificate.

11. Accordingly, on 16 February 1990, he was discharged under honorable conditions (General). His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 7 months, and 4 days of active service. It also shows in:

- Item 25 (Separation Authority): AR 635-200, paragraph 14-12c
- Item 26 (Separation Code): JKQ
- Item 27 (Reentry Code): RE-3
- Item 28 (Narrative Reason for Separation): Misconduct – Commission of Serious Offense

12. There is no evidence the applicant applied to the Army Discharge Review Board (ADRB) within the ADRB's 15-years statute of limitations.

13. By regulation, AR 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct.
14. 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 receiving several letters of indebtedness for failing to maintain funds in his checking account, continuously failing to be on time for formations and receiving numerous statements to that effect in addition to one article 15, he was also cited for driving a vehicle without any insurance, registration, or plates. 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

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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.

4/11/2025



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) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service. The regulation in effect at the time stated individuals in pay grades E-5 and above could be processed for separation upon discovery of a drug offense. Those in pay grades below E-5 could also be processed after a first drug offense and must have been processed for separation after a second offense. The issuance of a discharge under other than honorable conditions was normally considered appropriate.
 - a. Paragraph 3-7a (1) 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.
 - b. Paragraph 3-7b (1) 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. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.
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//