

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2025

DOCKET NUMBER: AR20240006034

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to under honorable conditions (general).

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

- DD Form 149 (Application for Correction of Military Record)
- Three Character Statements

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 under other than honorable conditions discharge to under honorable conditions (general). The applicant recognizes he made mistakes during his youth, but he has since matured and serves as a commendable carpenter post-discharge. He believes his current characterization of discharge has limited his access to medical care and he has service-related injuries. The upgrade would rectify and injustice. The upgrade would reflect his service as a whole, including his commitments and sacrifices. Furthermore, an upgrade would honor his efforts to lead a meaningful life post-service and allow him to fully integrate as a contributing, supported member of society.
3. The applicant provides three character statements from Soldiers he previously served with which describe the applicant as having a likable disposition, great morale, displayed leadership qualities, professional, motivated, hardworking, proud of service to the nation, and one of few enlisted Soldiers to receive the Joint Service Achievement Medal during their contingency operation mission. Character statements were provided by the following:

- Sergeant CM, 27 January 2022

- Mr. ED, 30 January 2022
- First Sergeant PVS, 26 January 2022

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

- a. He enlisted in the Regular Army on 7 January 1999.
- b. He served in Haiti from 18 August 1999 to 18 January 2000.
- c. On 24 November 1999, he accepted nonjudicial punishment for the below:
 - 28 August 2000 – violation of a lawful order by chambering a round into his weapon and pointing it at another Soldier; his punishment included reduction to private first class (PFC), E-3
 - 27 April 2001 – four specifications of failure to be at his appointed place of duty and three specifications of being disrespectful in deportment towards a superior noncommissioned officer (NCO); his punishment included reduction to private (PV2), E-2

d. On 30 April 2002, the company commander issued the applicant a letter of reprimand. The applicant was stopped by the police in Oak Grove, KY with an odor of alcohol emitting from his person. He was required to take a breathalyzer test which he refused. Additionally, he was arrested and charged with driving under the influence, possession of marijuana, possession of drug paraphernalia, and unlawful transaction with a minor. Furthermore, he received nonjudicial punishment for failing to attend the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) he self-referred to following return from Kosovo. The applicant admitted to having a problem with alcohol and previously admitted in court to smoking marijuana. The applicant was administratively reduced to private (PVT), E-1 and the chain of command notified him of their consideration for initiation of separation.

e. On 8 June 2001, the applicant underwent a medical examination for the purpose of separation which indicated he was generally in good health with the exception of shoulder surgery completed in January 2001 and knee pain. The applicant noted on his examination he was in "decent" health. He was marked qualified for separation.

- Standard Form (SF) 88 (Report of Medical Examination)
- SF 93 (Report of Medical History)
- DA Form 3822-R (Report of Mental Status Evaluation)

f. The applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 14, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) for commission of a serious offense. The

specific reasons for his proposed recommendation were his second offense of driving under the influence. The applicant acknowledged receipt with his signature.

g. On 1 August 2001, 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 general, under honorable conditions discharge is issued to him
- he may be ineligible for many or all benefits as a Veteran under both Federal and State laws
- 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 commission of a serious offense. He recommended that his period of service be characterized as under other than honorable conditions. The intermediate commanders recommended approval.

i. On 24 August 2001, 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 14-12c for commission of a serious offense. He would be issued an under other than honorable conditions characterization of service.

j. On 7 September 2001, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years, 8 months, and 7 days of active service with no lost time. It also shows he was awarded or authorized:

- Joint Service Achievement Medal
- Joint Meritorious Unit Award
- Armed Forces Service Medal
- Army Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade Bar

5. On 14 November 2009, the applicant was notified the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. By regulation, 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.

7. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 7 September 2001 discharge characterized as under other than honorable conditions. He states:

“I request upgrading my discharge to Under Honorable Conditions (General), considering my awarded service, mistakes during my youth, and growth since. I've been a commendable carpenter post-discharge. I face challenges from service-related injuries, limiting access to deserved medical care. This upgrade would acknowledge my contributions and rectify an injustice.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 7 January 1999 and was discharged under other than honorable conditions on 7 September 2001 under the separation authority provided by paragraph 14-12c of AR 635-200, Personnel Separations – Enlisted Personnel (1 November 2000): Commission of a serious offense. It does not list a period of service in a hazardous duty pay area.

d. In an undated memorandum, the applicant's company commander informed him of the initiation of separation action under paragraph 14-12c of AR 635 200: “The reason for my proposed action is for receiving your second D.U.I offence.

e. On 24 August 2001, the Commanding General approved the applicant's separation under paragraph 14-12c of AR 635-200 and directed he be separated from service with an under other than honorable conditions characterization of service.

f. No medical documentation was submitted with the application. There are no encounters in the EMR. JLV contains several clinical encounters from 2011-2013. He has no mental health conditions listed on his medical problem list.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, his military record, the frequency and nature of his misconduct, evidence of NJP, a second DUI offense, the reason for his separation and the character of service he received upon discharge. The Board considered the references he provided from fellow Soldiers, but found the applicant did not provide additional evidence of post-service achievements in support of a clemency determination. The Board considered the review and conclusions of the medical advisor, the absence of mental health conditions listed in his VA JLV and found no evidence of a condition of experience that might excuse or mitigate the applicant's discharge. Based on a preponderance of evidence, the Board determined that the applicant's character of service was not in error or unjust and that an upgrade was not warranted as a matter of liberal consideration or clemency.

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.

X//Signed//

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets 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 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 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.

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.

4. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by

ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//