

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 January 2025

DOCKET NUMBER: AR20240006367

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions 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 he is requesting his DD Form 214 (Certificate of Release or Discharge from Active Duty) be corrected to show an upgrade from his under other than honorable conditions discharge to honorable to facilitate his request for Department of Veterans Affairs benefits.
3. A review of the applicant's service record shows:
  - a. The applicant enlisted in the Regular Army on 20 February 1996.
  - b. His DA Form 2-1 (Personnel Qualification Record) shows he was in training at Fort Stewart, GA. The applicant was assigned to Company A, 1st Battalion, 64th Armor on 19 June 1996.
  - c. He accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice, on three occasions:
    - 18 July 1996 – dereliction of duties on or about 16 July 1996
    - 15 October 1996 – dereliction of duties on or about 19 September 1996; his punishment included reduction to private/E-1

- 25 November 1996 – breaking restriction on or about 23 October 1996

d. The service record includes the applicant's medical evaluation for the purpose of administrative separation which indicated he was in generally good health, he met the retention requirements, was mentally responsible, had the mental capacity to understand and participate in the proceedings, and was psychiatrically cleared for any administrative action deemed appropriate by his command. The applicant was marked qualified for chapter.

- DA Form 3822-R (Report of Mental Status Evaluation), 27 November 1996
- SF 88 (Report of Medical Examination) dated 29 January 1997

e. On 3 February 1997, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14-12b, for patterns of misconduct and 14-12c, for commission of a serious offense. The reasons for his proposed action included breaking restriction, indebtedness, bad checks, being asleep on guard duty, dereliction of duties, false official statements to a noncommissioned officer (NCO), TA-50 not being inspected, and disobeying a NCO. The applicant acknowledged receipt of the notification on the same day.

f. On 7 February 1997, after consultation 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 discharge under honorable conditions 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 will be ineligible to apply for enlistment at any time following discharge
- he elected to waive consideration of his case before an administrative separation board and to submit statements on his own behalf

g. The immediate commander initiated separation action against the applicant for a pattern of misconduct and commission of a serious offense. He recommended that his period of service be characterized as general, under honorable conditions. The intermediate commanders recommended approval with an under other than honorable conditions discharge.

h. On 27 February 1997, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter

14 for a pattern of misconduct and commission of serious offense. He would be issued an under other than honorable conditions discharge.

i. On 10 March 1997, 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 1 year and 21 days of active service with no lost time. He was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct," with reentry code 3. It also shows he was awarded or authorized:

- Army Service Ribbon
- Expert Marksmanship Qualification Badge with Pistol Bar (9 mm)
- Sharpshooter Marksmanship Qualification Badge with Hand Grenade Bar

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 635-200), action will be taken to separate a Soldier for misconduct, such as commission of a serious offense, 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.

6. 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.

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 short term of honorable service completed prior to the pattern of misconduct leading to the applicant's separation, as well as the lack of any mitigating evidence submitted by the applicant, 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
■	■	■	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.

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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 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.

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 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was 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.

//NOTHING FOLLOWS//