

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF [REDACTED]

BOARD DATE: 25 February 2025

DOCKET NUMBER: AR20240006416

APPLICANT REQUESTS: upgrade of his (general), under honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- General Discharge Certificate
- DD Form 214 (Certificate or Release or Discharge from Active Duty)
- Permanent Orders 000198-114, 30 November 1994
- Orders A024-02, 24 January 1995

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 believes he was treated as a minority and pushed from the military service due to his spouse's affair with other service members.
3. The applicant enlisted in the Regular Army on 29 October 1991. He held military occupational specialty 13B (Cannon Crewmember). His first duty station was Hawaii.
4. He received non-judicial punishment under article 15 of the Uniform Code of Military Justice on 14 May 1992, for on or about 6 May 1992, without authority fail to go at the time prescribed to his appointed place of duty.
5. On 7 December 1994, he received a letter of warning due to his spouse being the subject of a military police report involving assault.
6. On 15 December 1994, he underwent a medical examination and was found qualified for separation.

7. On 10 January 1995, his immediate commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 13, for unsatisfactory performance. The basis for his action was inability to adapt to the military, and minor disciplinary infractions to include failure to be at his appointed place of duty, failure to follow instructions, and inability to pay his debts in a timely manner. He acknowledged receipt of the notification on the same date.

8. The applicant having been advised by consulting counsel of the basis for the contemplated action to separate him for unsatisfactory performance under AR 635-200, chapter 13, and its effects, of the rights available to him, and the effect of any action taken by him in waiving his rights. He understood 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 United States Army prior to his term of service and receive a General Discharge Certificate.

10. On 23 January 1995, the separation authority approved separation under the provisions of AR 635-200, chapter 13, and directed that he receives a General Discharge Certificate.

11. Accordingly, he was discharged on 17 February 1995, under honorable conditions (general). His DD Form 214 shows he completed 3 years, 3 months, and 19 days net active service this period. He was awarded or authorized Army Good Conduct Medal, National Defense Service Medal, Army Service Ribbon, Overseas Service Ribbon, Sharpshooter Marksmanship Qualification Badge (Rifle), Air Assault Badge, and Driver and Mechanic Badge with Driver-M Bar. It also shows:

- Item 25 (Separation Authority): AR 635-200, Chapter 13
- Item 26 (Separation Code): JHJ
- Item 27 (Reentry Code): 3
- Item 28 (Narrative Reason for Separation): Unsatisfactory Performance

12. The applicant provides:

- General Discharge Certificate showing his discharge effective 17 February 1995
- Permanent Orders 000198-114, issued 30 November 1994, awarding his first Good Conduct Medal
- Orders A024-02, issued 24 January 1995, showing his reassignment to U.S. Army Transition Point with a report date of 17 February 1995

13. There is no evidence the applicant applied to the Army Discharge Review Board (ADRB) for review of his discharge within the ADRB's 15-year statute of limitations.

14. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. Chapter 13 of this regulation, in effect at the time, provides for separation due to unsatisfactory performance when in the commander's judgment the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely.

15. 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 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 misconduct leading to the applicant's separation, including some of a violent nature, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

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

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 (AR) 635-200 sets forth the requirements and procedures for administrative discharge of enlisted personnel. Chapter 13 of this regulation, in effect at the time, provides for separation due to unsatisfactory performance when in the commander's judgment the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.

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//