

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2025

DOCKET NUMBER: AR20240006957

APPLICANT REQUESTS: reconsideration of his previous request for 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)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20160007441 on 19 June 2018.

2. The applicant states he did not know his rights nor anyone who could help him. This is his chance at redemption. He is in hope of leniency, due to the first incident of a .5 alcohol level while on duty. It cost him his military career. He wanted to serve his country, but he needed help.

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

a. He enlisted in the Regular Army on 29 July 1987.

b. He served in Germany from 16 May 1989 until 14 January 1991.

c. While serving in Germany, he received a General Officer Memorandum of Reprimand on 18 October 1989, for on 7 September 1989, he was in physical control of a motor vehicle at Kitzingen, Germany, while his blood alcohol level was greater than or equal to 0.87 milligrams of alcohol per milliliter of white blood.

d. A DA Form 4430-R (Department of the Army Report of Result of Trial) shows the applicant appeared before a summary court-martial on 11 December 1989, in Kitzingen, Federal Republic of Germany. He was found guilty of:

- one specification of resisting arrest by the German police

- two specifications of being drunk and disorderly on 7 September 1989 and 14 October 1989
- one specification of drunk driving
- He was sentenced to hard labor without confinement for 45 days, forfeiture of \$300 pay for one month, and reduction in rank/grade to private/E-2

e. He received non-judicial punishment on 16 November 1990, for on or about 14 July 1990, wrongfully leaving the scene of an accident, in which the vehicle that he was driving was involved, without making his identity known; and for violating a lawful general regulation on or about 9 October 1990, by wrongfully having a blood alcohol level of 0.5mg/ml while on duty.

f. On 13 December 1990, his commander notified him of his intent to separate him under the provisions (UP) of Army Regulation (AR) 635-200 (Personnel Separation – Enlisted Personnel), chapter 14 due to commission of a serious offense. He acknowledged on the same day.

g. He was advised by consulting counsel of the basis for the contemplated action to separate him and its effects; of the rights available to him; and the effects of any action by him waiving his rights.

h. His chain of command recommend approval and that his character of service be (general) under honorable conditions.

i. On 14 December 1990, the separation authority approved separation; he directed a General Discharge Certificate be issued.

j. Accordingly, he was discharged under honorable conditions on 15 January 1991, UP of AR 635-200, paragraph 14-12c, for misconduct – commission of a serious offense. He completed 3 years, 5 months, and 17 days net active service this period.

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

5. In his previous request (AR20160007441) on 19 June 2018, after reviewing the application and all supporting documents, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned. The application submitted was denied by the ABCMR.

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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. The Board noted the applicant had two incidents of driving under the influence with one resulting in a hit and run. The Board found insufficient evidence of in-service mitigating factors for the misconduct and the applicant provided no evidence of post-service achievements or letters of support to weigh a clemency determination. Based upon a preponderance of evidence, the Board determined there was insufficient evidence of an error or injustice to amend the previous Board's decision.

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 to amend the decision of the ABCMR set forth in Docket Number AR20160007441 on 19 June 2018.

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. 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. 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. 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. 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.

2. 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. 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. 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//