

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 February 2025

DOCKET NUMBER: AR20240007084

APPLICANT REQUESTS:

- upgrade of his under honorable conditions (general) discharge
- restoration of his rank/grade to private first class/E-3

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

DD Form 149 (Application for Correction of Military Record)

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 needs to change his record so he can seek medical and educational benefits.
3. On 30 July 1996, the applicant enlisted in the Regular Army for 5 years, in pay grade E-3.
4. The applicant received formal counseling on 15 August 1997, for adultery.
5. On 15 August 1997, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for disrespecting a noncommissioned officer, on or about 11 July 1997; and disobeying a lawful order from a noncommissioned officer, on or about 11 July 1997. His punishment included reduction to pay grade E-2, forfeiture of \$235.00 pay, and 14 days restriction and extra duty.
6. The applicant received additional counseling on the following dates/for:
 - 21 October 1997; disrespecting a noncommissioned officer
 - 28 October 1997; being delinquent on a loan

7. On 12 November 1997, the applicant was reported as absent without leave and remained absent until he returned to military control on 16 November 1997.
8. The applicant's commander notified him on 8 December 1997, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, for a pattern of misconduct. As the specific reasons, the commander cited the applicant's multiple incidents of disrespect to noncommissioned officers.
9. The applicant acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood he could expect to encounter substantial prejudice in civilian life if he was issued an under honorable conditions (general) discharge. The available record is void of a statement in his own behalf.
10. On 11 December 1997, the applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, paragraph 14-12b.
11. By legal review on 29 December 1997, the applicant's separation action was found to be legally sufficient for further processing.
12. Consistent with the chain of command's recommendations, the separation authority approved the recommended discharge, and directed issuance of a General Discharge Certificate.
13. On 4 January 1998, the applicant was reported as confined by civil authorities and remained in confinement until he returned to military control on 7 January 1998. The available record is void of documents containing the specific facts and circumstances surrounding his confinement.
14. The applicant was discharged on 3 February 1998, in pay grade E-2. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12b, for misconduct. His service was characterized as under honorable conditions (general). He was assigned Separation Code JKA and Reentry Code 3. He completed 1 year, 5 months, and 27 days of net active service this period with 7 days of lost time.
15. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

1. 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. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board found the characterization of service and reduction in rank were appropriate and warranted based on the documented pattern of misconduct.

2. The Board recognized the applicant's initial enlistment and time served, it found that the repeated disciplinary infractions, failure to adhere to military standards, and absence without leave reflect a sustained pattern of misconduct incompatible with continued service. The reduction in rank and characterization of service were consistent with regulatory guidance and the severity of the offenses. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board found no evidence of error or injustice in the discharge process or the resulting personnel actions. The applicant's discharge and reduction in rank are affirmed as proper and equitable. Therefore, relief is denied.

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 635-200 (Personnel Separations – Enlisted Personnel) sets forth the requirements for the administrative separation of enlisted personnel. The version in effect at the time provided that:
 - 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. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or 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/NR) 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.

//NOTHING FOLLOWS//