

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 January 2025

DOCKET NUMBER: AR20240007392

APPLICANT REQUESTS: an upgrade of his general, under honorable conditions discharge to an honorable

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- DD Form 214 (Certificate of Release or Discharge)
- National Personnel Records Center (NPRC) Letter

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 was told when he was discharged that he could apply for a Honorable Discharge after a year.
3. The applicant provides:
  - a. The provides his DD Form 214 dated 10 March 1986.
  - b. A letter for NPRC dated 18 December 2023, which informs the applicant that they have no authority to review and approve amendments or corrections to military records. NPRC forwarded the applicant packet to the Army Review Board Agency.
4. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 2 April 1985.

b. On 6 November 1985, a DA Form 2496 (Disposition Form) shows the security clearance division suspended the applicant's clearance. After review of the applicant's records, they found that the applicant did not list all civil arrest.

c. On 18 November 1985, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 7-17, Army Regulation (AR) 635-200 (Personnel Separation – Enlisted Personnel) for the incident of fraudulent entry. The commander recommended the applicant receive a general – under honorable conditions discharge. He acknowledged receipt of the notification of separation action on the same day.

d. On 18 November 1985, the immediate commander-initiated separation action against the applicant for fraudulent entry. He recommended that the applicant's period of service be characterized as general, under honorable conditions. The intermediate commander recommended approval.

e. On 3 December 1985, after consulting with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he desired to make statements in his own behalf
- he may encounter substantial prejudice in civilian life if a discharge under other than honorable conditions is issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he understood that if his was considered for separation for fraudulent entry his enlistment may be voided under certain circumstances
- he will be temporarily or permanently ineligible to apply for reenlistment in the United States Army after discharge.

f. On 16 January 1986, a DA Form 2823 (Sworn Statement) states, He wanted to be a soldier in the army since he was a little boy. After college when his football career ended, he decided to enlist in the Army. He knew that through the army had unlimited potential to be all he could be. By increase his knowledge, travel, meet new friends and most of all serve his country proudly. He did good in basic training, and he was good in AIT. He was very proud to be an American soldier. His family is proud of him, and He would like to stay in the army, advance in rank and make the Army his career. When he retires from the Army, he would have something to be very proud of. All he needed was a chance to prove that he could be a valuable asset to the army. The applicant states he informed his recruiter of his civil violations as listed below:

- 31 March 1981 and 11 June 1981, the applicant was arrest for selling magazines without a permit. On each occasion he was released on bail.
- 9 February 1982, applicant was arrested for justification of burglary. The charges were dropped.
- 11 January 1983, the applicant was arrested for receiving stolen property. He was placed in jail for 30 days and released on probation.
- 2 October 1984, the applicant was arrested for probation violation. He was placed in jail for 60 days and taken off if probation.
- 2 May 1983, the applicant was arrested for speeding and false I.D. He was confined for 15 days.
- 17 May 1984 and 7 June 1984, the applicant was arrested for possession of narcotics. He was detained and released.

g. The service record includes the applicant's medical examination, dated 23 January 1986, for the purpose of separation which indicated he was generally in good health. The applicant was marked qualified for separation.

- Standard Form (SF) 88 (Report of Medical Examination)
- SF 93 (Report of Medical History)

h. On 6 February 1986, the applicant underwent a mental evaluation. The DA Form 3822-R (Report of Mental Status Evaluation) shows the applicant had the mental capacity to understand and participate in the proceedings.

i. On 28 February 1986, the separation authority approved the discharge recommendation for separation under the provisions of AR 635-200, Chapter 7-17b, for fraudulent entry. The applicant would be issued a general, under honorable conditions discharge.

j. On 6 March 1986, orders number 45-1 show the applicant will be discharged on 10 March 1986.

k. On 10 March 1986, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 shows he completed 11 months, and 9 days of active service with no lost time. He was assigned separation code JDA and the narrative reason for separation listed as "Fraudulent Entry" with reentry code 3.

5. 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.

6. By regulation (AR 635-200), fraudulent entry, is the procurement of an enlistment, reenlistment, or period of active service through any deliberate material

misrepresentation; omission, or concealment of information which, if known and considered by the Army at the time of enlistment or reenlistment, might have resulted in rejection. This includes all disqualifying information requiring a waiver.

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.

**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 available documentation showing the applicant fraudulently enlisted and provided no mitigation and/or clemency evidence for the board's consideration, 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>	
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:	:	:	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

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 Separation – 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. Paragraph 7-17. Incident of fraudulent entry. Fraudulent entry is the procurement of an enlistment, re-enlistment, or period of active service through any deliberate material misrepresentation, omission, or concealment of information which, if known and considered by the Army at the time of enlistment or re-enlistment, might have resulted in rejection. This includes all disqualifying information requiring a waiver. However, the enlistment of a minor with false representation as to age and without proper consent will not in itself be considered a fraudulent enlistment.

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//