

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2025

DOCKET NUMBER: AR20240008074

APPLICANT REQUESTS: upgrade of character of service from "Under Honorable Conditions (General)" to "Honorable."

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty),
22 May 1985

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 previously discharged from military service upon receipt of his second Driving Under Influence (Alcohol). He contests that, since 29 September 1987, he has been sober. He has been married for over 30 years and has raised 3 children, one of whom is a Navy Officer. Since being discharged he has worked for the city of Tucson, AZ and given back to his community. He argues that during his period of service, there was no rehabilitation process nor were there attempts made to deal with his alcoholism. He was a good Soldier and his unit maintained the best rating within his brigade for 2 years. He is proud of his military service and the character that it established. However, his current characterization of service has remained a point of shame that has taken some time to overcome. Granting this request would finish this process.
3. A review of the applicant's available service records reflects the following:
 - a. On 4 August 1982, the applicant enlisted in the Regular Army for 4 years with duty as a 11B (Infantryman).
 - b. On 1 February 1984, the applicant was advanced to specialist (SPC)/E-4.

c. On or about 20 December 1984, the applicant received Nonjudicial Judicial Punishment (NJP) in accordance with Article 15, Uniformed Code of Military Justice (UCMJ) for the wrongful use of an illegal substance (marijuana) between 6-16 November 1984, in violation of Article 112a., UCMJ. The applicant was subsequently reduced to private first class (PFC)/E-3, required to forfeit \$366.00 per month for 2 months, restricted and required to perform 45 days of extra duty.

d. On 14 February 1985, the applicant received NJP under Article 15, UCMJ for failing to obey a direct order on or about 9 February 1985, in violation of Article 91, UCMJ. The applicant was subsequently confined for 7 days.

e. On or about 7 May 1985, the applicant's commander - initiated separation procedures due to his consistent misconduct noting that the applicant was a drug and alcohol rehabilitation program failure. The applicant was advised of his rights and elected to waive his rights to a personal appearance board. The commander noted the following infractions:

- Driving Under Influence (20 August 1983)
- Wrongful Use of Marijuana (20 December 1984)
- Driving While Impaired (15 April 1985)

f. On 10 May 1985, the Brigade Commander approved the recommendation that the applicant be discharge in accordance with Army Regulation 635-200 (Administrative Separations – Enlisted Personnel), Chapter 14 (Misconduct/Abuse of Illegal Drug). He directed that the applicant be issued a General Discharge Certificate.

g. On 21 May 1985, Headquarters, 82nd Airborne Division issued Orders Number 98-83, reassigning the applicant to the U.S. Army transition point pending separation processing.

h. On 22 May 1985, the applicant was discharged from military service after serving 2 years, 9 months, and 19 days. DD Form 214, item 24 (Character of Service) reflects “Under Honorable Conditions (General); item 25 (Separation Authority) reflects “Army Regulation 635-200, Paragraph 14-12d. Section III; item 28 (Narrative Reason for Separation) reflects “Misconduct – Drug Abuse.”

i. On or about 16 December 1986, the applicant requested a review of his discharge.

j. On 7 February 1987, the Army Discharge Review Board considered the applicant's request and noted that he was properly and equitably discharged. Accordingly his request for an upgrade of his discharge was denied.

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant’s statement and record of service, the frequency and nature of the applicant’s misconduct and the reason for separation. The evidence of record includes multiple serious infractions, notably two separate incidents of DUI and NJP under Article 15 of the UCMJ. These offenses represent a clear disregard for military discipline and the standards expected of service members. The applicant’s discharge characterization accurately reflects the nature and severity of the misconduct. The Board concluded there was no error or injustice and denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 states in pertinent part, that action will be taken to separate a soldier for misconduct. when it is clearly established that:

- despite attempts to rehabilitate or develop him/her as a satisfactory Soldier, further effort is unlikely to succeed
- rehabilitation is impracticable, or the Soldier's not amenable to rehabilitation (as indicated by the medical or personal history record)

Before taking action against a Soldier under section III of this chapter because of minor disciplinary infractions or a pattern of misconduct, commanders will ensure that the Soldier has received adequate counseling and rehabilitation. A discharge under Other Than Honorable Conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a General Discharge if such is merited by the Soldier's overall record.

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and 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 on the basis of 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//