

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2025

DOCKET NUMBER: AR20240009301

APPLICANT REQUESTS: An 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)
- Mr. R. D. letter, 19 December 2023, and an employee who learned quickly and showed compassion for his fellow colleagues
- Reverend W. W. letter, 8 July 2024, describing the applicant as a great of integrity, good work ethic, and kindness
- Ms. C. M. letter, 8 July 2024, letter, showing the applicant was a pillar in the community, but because of a decline in health, is not well now

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, in effect, he regrets any unfortunate circumstances that led to the general (under honorable conditions) discharge.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 28 December 1989 for three years.
 - b. He received Field Grade Article 15, Uniform Code of Military Justice (UCMJ), on 2 October 1990, for:
 - On or about 0630, 24 September 1990, without authority, absent himself from his unit until on or about 0630, 25 September 1990,

- On or about 23 September 1990, without authority, fail to go at the time to is appointed place of duty, to wit: 1300, extra duty
- On or about 22 September 1990, break restriction

c. Six DA Forms 4856 reflect the applicant was counseled between 17 September and 18 December 1990 for failure to report at the time prescribed to his appointed place of duty on multiple occasions and breaking restriction.

d. On 3 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 13 due to unsatisfactory performance for failure to report to sick call, extra duty, and duty, and for breaking restriction; he acknowledged on 3 December 1990.

e. 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.

f. His commander recommended approval and that his character of service be general (under honorable conditions).

g. The separation authority approved separation and directed a general (under honorable conditions) character of service.

h. Accordingly, he was discharged under honorable conditions on 16 January 1991; he completed 1 year and 7 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 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:

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 and multiple infractions. The Board considered the applicant's character letters of support attesting to his post service, community engagement and dedication and integrity for the man he has become since his discharge.

2. The Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period of 1 year and 7 days net active service this period. The applicant was discharged for unsatisfactory performance and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Based on this, the Board denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : 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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.
3. Army Regulation 635-200 (Personnel Separations – 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 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. 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 13 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.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs 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.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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//