

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 April 2025

DOCKET NUMBER: AR20240009679

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 30 May 2024
- Self-authored statement, 30 May 2024

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 contacted by the Army Criminal Investigation Division in connection with an allegation that he had harassed a fellow soldier, an accusation he denies. As part of the investigation, he was asked to take a polygraph test, which he agreed to. After being told he failed the test, he requested to take another test, but that request was denied. After his failed polygraph test, he was issued discharge paperwork, which he signed without reading. Throughout the entire process, he was never shown any evidence, never informed of who the victim was, and was never charged under the Uniform Code of Military Justice (UCMJ). He was also not given an opportunity to defend himself through proper due process and was never allowed to speak with anyone through legal counsel.
3. The applicant provides:
 - a. Two pages of the applicant's criminal history covering the period from 15 December 1994 to 30 March 2016, showing he was arrested on multiple occasions for the following charges:
 - Criminal domestic violence
 - Resisting arrest

- Simple assault and battery
- Disorderly conduct
- Criminal domestic violence
- Reckless driving
- Passing a stopped school bus

b. Two letters of support from his general manager and pastor, wherein they state the applicant is a reliable and dedicated worker who shows a lot of integrity. He has a good heart and will do anything to help others.

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

a. He enlisted in the Regular Army on 9 November 1977.

b. The DA Form 4845-R (General Counseling Form), 13 June 1985, shows the applicant was counseled by his first sergeant for being found behind closed doors of Specialist Y____ room. He was advised that his behavior was in violation of company policy and punishable under the UCMJ.

c. On 17 June 1985, the applicant underwent a mental status evaluation. The examining official did not note any mental issues and found the applicant had the mental capacity to understand and participate in proceedings.

d. The U.S. Army Criminal Investigation Command, memorandum (CID Report of Investigation – Initial Final), 20 June 1985, names the applicant as a subject for the offenses of violation of Article 129 (Burglary) and Article 134 (Indecent Assault), UCMJ. The report states the staff judge advocate stated there was sufficient probable cause to believe that the offense of indecent assault occurred and advised that the applicant should be charged for burglary and indecent assault. (Note: The full twenty-page report if available for the Board to view in the supporting documents.)

e. On 1 July 1985, the applicant's immediate commander notified the applicant that he was initiating action to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 14-12b, for acts or patterns of misconduct. The commander informed the applicant if he were to be discharged, the least favorable characterization of service he could receive is an under other than honorable conditions.

f. On 2 July 1985, the applicant acknowledged receipt of his commander's separation notification and after being advised by his consulting counsel of the basis for the contemplated action to separate him for pattern of misconduct under AR 635-200, chapter 14, paragraph 14-12b, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights.

(1) He requested a consultation with counsel.

(2) He waived his right to have his case considered by a board of officers.

(3) He elected to not submit statements on his own behalf.

(4) He did not request counsel representation.

(5) He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him.

g. On 9 July 1985, the applicant's immediate commander formally recommended he be separated under the provisions of AR 635-200, chapter 14-12c, for misconduct.

h. On 11 July 1985, the applicant's intermediate commander formally recommended he be separated under the provisions of AR 635-200, chapter 14-12c, for misconduct.

i. On 15 August 1985, the separation authority approved the request for discharge, under the provisions of AR 635-200, chapter 14, paragraph 14-12c, for misconduct. He directed the applicant be reduced to the lowest enlisted grade and he be issued an under other than honorable discharge.

j. The applicant was discharged on 9 August 1985. His DD Form 214 (Certificate of Release of Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct – commission of a serious offense, in the rank/grade of private/E-1, and his service was characterized as under other than honorable conditions. He completed 7 years, 9 months, and 19 days of net active service with lost time from 5 November 1979 to 5 November 1979. He was assigned the separation code of JKQ and the RE code of "3 and 3B". Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows he was awarded or authorized the following:

- Army Service Ribbon
- Overseas Service Ribbon
- Army Achievement Medal
- Army Good Conduct Medal (2d Award)
- Noncommissioned Officer Professional Development Ribbon
- Expert Marksmanship Qualification Badge with Rifle Bar
- Expert Marksmanship Qualification Badge with Grenade Bar

k. On 18 May 1987, the U.S. Army Reserve Personnel Center notified the applicant that the Army Discharge Review Board determined that he was properly and equitably

discharged and that his request for a change in the type and nature of his discharge had been denied.

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 serious and violent nature of the misconduct leading to the applicant's separation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

//SIGNED//

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 Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time, set 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 Soldier'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 used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, paragraph 14-12c for Misconduct-Pattern of Misconduct would receive a separation code of "JKQ."

4. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.

- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification.
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted.
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

5. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

6. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

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//