

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 April 2025

DOCKET NUMBER: AR20240009984

APPLICANT REQUESTS:

- an upgrade of his characterization of service from under honorable conditions (general) to honorable
- a personal appearance before the Board via video/telephone

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 acknowledges his mistakes that led to him over drafting his account. Once he was aware he began working a second job but was not able to get even before he was discharged. His discharge was only three weeks short of his expiration term of service. He is asking that the record of that mistake does not follow him forever.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 3 April 2003.
 - b. He received non-judicial punishment on 15 June 2005, for on or about 28 May 2005, violating a lawful general regulation, by wrongfully consuming alcohol while under age (Article 92, UCMJ).
 - c. Mental Status Evaluation, dated 1 December 2005, confirmed he was referred for a mental evaluation because he was being considered for discharge. The evaluation indicated he had the mental capacity to understand and participate in the evaluation and was mentally responsible.

d. Medical evaluations for the purpose of administrative separation which indicated he was qualified for service.

e. On 6 January 2006, 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 14-12b, due to pattern of misconduct. He acknowledged on the same day.

f. 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 on 10 January 2006. He elected to submit matters on his behalf; matters were not submitted.

g. His commander and chain of command recommend approval and that his character of service be general, under honorable conditions.

h. The separation authority approved separation and directed that a General Discharge Certificate be issued.

i. The applicant was discharged on 28 February 2006, and received a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged UP of AR 635-200, paragraph 14-12b, by reason of pattern of misconduct. He completed 2 years, 10 months, and 28 days of net active service this period.

4. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge processing 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 request 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 applicant was separated for a pattern of misconduct and although the Board did not find any other infractions in the applicant's service record, they presumed the presumption of regularity, that the DD Form 214 was correct at the time of his discharge. In addition, the Board found that

the applicant has already received a general discharge at the time of his separation. Therefore, the Board determined there was no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board also noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

[REDACTED] [REDACTED] [REDACTED] 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.

5/5/2025

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 15–185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, it states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR will decide cases based on the evidence of record. It is not an investigative agency. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
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. 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. 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.
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. 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.
- 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//