

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 May 2025

DOCKET NUMBER: AR20240010435

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions (general).

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 that upon returning from Operation Enduring Freedom, he began his substance abuse addiction as coping mechanism from the harsh unsettling war environment and experiences. He had no prior habits or addictions and could not get any help during his time of uncertainty because of behavioral changes. He does not believe substance abuse would have been his burden had he not dealt with the trauma and situations that came with his assignment. He completed his duties and tasks honorably, even with his addiction. He had a hard time understanding mentally and socially what was going on and it led to the addiction, in which his endeavor has been to conquer through the support and/or tools provided through the Department of Veterans Affairs.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 21 August 2002 for a period of three years.
 - b. He reenlisted on 28 March 2005.
 - c. He accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice on:

- 26 July 2005, for between on or about 20 June 2005 and 27 June 2005, wrongfully using cocaine, a controlled substance. He was reduced to private/E-3.
- 9 August 2005, for between on or about 9 July 2005 and 16 July 2005, wrongfully using cocaine, a controlled substance. He was reduced to private/E-1.

d. On 13 December 2005, his commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), chapter 14, paragraph 14-12c (2), for commission of a serious offense. The commander listed the following reason for the proposed action: between on or about 20 June 2005 and 27 June 2005 and between 9 July 2005 and 16 July 2005, he wrongfully tested positive for cocaine, a controlled substance. He acknowledged receipt on 13 December 2005.

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 effect of any action he took in waiving his rights.

f. His chain of command recommended approval, with a general, under honorable conditions discharge.

g. On 29 December 2005, the separation authority approved the separation, directed he receive a general, under honorable conditions discharge, and waived the requirement for rehabilitative transfer.

h. Accordingly, he was discharged on 30 January 2006, under the provisions of AR 635-200, paragraph 14-12c (2), by reason of misconduct (drug abuse), and his service was characterized as general, under honorable conditions. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 years, 5 months, and 10 days of net active service this period. This form also shows in:

- Item 13 (Decorations, Medals, Badges, Citation and Campaign Ribbons Awarded or Authorized):
 - National Defense Service Medal
 - Global War on Terrorism Service Medal
 - Army Service Ribbon
 - Overseas Service Ribbon (2nd Award)
 - Afghanistan Campaign Medal
 - Marksman Marksmanship Qualification Badge with rifle bar
- Item 18 (Remarks):

- Immediate reenlistments this period: 28 March 2005 – 30 January 2006
- Member has completed first full term of service
- Served in designated imminent danger pay area
- Service in Afghanistan from 5 May 2004 to 1 April 2005

4. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge processing within the 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:

After thorough review of the application, supporting documents, and the applicant's military record, the Board determined that partial relief was warranted in this case. The Board carefully considered the applicant's request for an upgrade of his discharge characterization from "under conditions other than honorable" to "under honorable conditions (General)" and conducted a comprehensive review in accordance with published Department of Defense guidelines for liberal consideration of discharge upgrade requests. The applicant's record shows a consistent pattern of misconduct, including drug use (cocaine) on two occasions. The Board found no evidence of mitigation or supportive documentation to warrant clemency. However, the Board did note that the applicant had prior honorable service which was not annotated on his DD form 214; therefore, the Board determined partial relief was granted to add continuous honorable service to his DD Form 214.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
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:	:	:	GRANT FULL RELIEF
XXX	XXX	XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 30 January 2006, to show "Continuous Honorable Active Service from 21 August 2002 to 27 March 2005".
2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading his characterization of service.

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214 for the period ending 30 January 2006 is missing required entries. As a result, amend the DD Form 214 by adding the following entry in item 18 (Remarks): CONTINUOUS HONORABLE ACTIVE SERVICE FROM 20020821 – 20050327.

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 Separations – Active Duty Enlisted Administrative Separations) set forth the basic authority for the separation of enlisted personnel.

a. 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.

b. 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.

c. 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.

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 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//