

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 April 2025

DOCKET NUMBER: AR20240010660

APPLICANT REQUESTS:

- upgrade his under other than honorable conditions discharge to honorable for the period ending 28 November 2007
- “remove willful and persistent misconduct from DD Form 214”
- “restore final rank from E-1 to E-6”

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Letter dated 30 May 2024, which indicates the VA decided the applicant's military service for the period of 20 June 2005 to 28 November 2007 was honorable for VA purposes. The applicant had more than one period of military service for eligibility for the VA (2 May 1999 through 15 January 2000).
- VA Letter dated 31 May 2024, which indicates the VA is working on the applicants' claim

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, upgrade his under other than honorable conditions discharge to honorable on his DD Form 214 for the period ending 28 November 2007, remove willful and persistent misconduct from DD Form 214, and restore his final rank from E-1 to E-6. The corrections should be made because there was no pattern of misconduct. His personnel records showed he received good performance reviews up to the point of discharge. There was no willful and/or persistent misconduct with unfair punishment leading up to his discharge. Since his discharge in 2007, he has been working and taking care of his family obligations. The discharge has presented a hardship along with

the death of his mother and sister. Additionally, it has caused a hardship with his child support payments and difficulty getting decent jobs.

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

- a. Having prior enlistment in the Virginia Army National Guard, he enlisted in the U.S. Army Reserves on 15 March 1994.
- b. He received five separate Letters of Instructions for unexcused absence for the periods 1 April 1995 through 6 August 1995.
- c. The available service records show the applicant served in Germany in support of Operation Joint Forge from 13 May 1999 to 3 January 2000.
- d. On 14 August 2005, the applicant appeared before the State of Tennessee (TN) County of Davidson Court for unlawfully, intentionally or knowingly cause to reasonably fear imminent bodily injury. He was convicted and sentenced to six months in jail.
- e. On 14 October 2006, his immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Active Duty Enlisted Administrative Separations), paragraphs 5-14a, 7-17a (1)(2), 13-2a (1)-(6), 14-5a (2), 14-12b (2), and chapter 14-12c, for pattern of misconduct. The commander recommended that his period of service be characterized as under other than honorable conditions. He acknowledged receipt on 14 October 2006 and he requested consideration of his case by an administrative separation board. The commander listed the following reasons for the proposed action:

- intentionally concealed his arrest and conviction record in documents submitted to the United States Government
- fraudulently procured his re-enlistment in the Army Reserve on 9 November 2004 by deliberately omitting and concealing information
- charged with assaulting a woman and convicted of harassing her and sentenced by a civilian criminal court in Nashville, TN on 22 November 2005 to a period of 6 months in jail
- demonstrated a pattern of misconduct by knowingly submitting false statements relating to prior criminal charges, arrests and convictions on 23 February 2005, and by knowingly providing false information regarding his past criminal record
- engaged in discreditable conduct which violated the accepted standards of personal conduct found in the UCMJ, by wrongfully cohabitating and having sexual relations with a woman not his wife, to the prejudice of the good order and discipline of, and discredit to, the Service between April 2005 and June 2005.

- disobeyed a lawful order issued to him by his superior commander, to provide him with certain contact information for his wife

f. The intermediate commander recommended approval of the separation, with a general, under honorable conditions characterization of service.

g. DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers), dated 19 October 2007, shows the Board made the following recommendation: that the applicant be separated from military service under the provisions of AR 635-200 and that his characterization of service be under other than honorable conditions.

h. On 26 October 2007, the Report of Proceedings were legally reviewed, and the administrative separation packet was found to be legally sufficient.

i. On 31 October 2007, the separation authority approved separation, directed the applicant be reduced to private/E-1, and issued an under other than honorable conditions discharge.

j. On 28 November 2007, he was discharged under the provisions of AR 635-200, paragraph 14-12b, by reason of pattern or misconduct, with an under other than honorable conditions characterization of service, in the rank of private/E-1. His DD Form 214 shows he completed 2 years, 5 months, and 9 days of net active service this period. This form also shows he was awarded or authorized:

- Army Achievement Medal
- Army Reserve Components Achievement Medal
- National Defense Service Medal
- Armed Forces Expeditionary Medal
- Noncommissioned Officer Professional Development Ribbon
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Armed Forces Reserve Medal with "M" device and 20-year device
- North Atlantic Treaty Organization (NATO) Medal
- Drill Sergeant Identification Badge

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 applicants 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, available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the pattern of misconduct. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination.
2. The Board found insufficient evidence to support the applicant's contentions to remove willful and persistent misconduct from his DD Form 214 or justification that warrants the Board to restore his final rank from E-1 to E-6. Furthermore, the Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to honorable. Therefore, 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]

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 (Personnel Separations - Active Duty Enlisted Administrative Separation), 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. 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 (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 based on 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//