

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 May 2025

DOCKET NUMBER: AR20240010804

APPLICANT REQUESTS:

- upgrade of his under honorable conditions (general) characterization of service
- change to his narrative reason for separation

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

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 21 June 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 the atmosphere of the military facilitated homophobia and racism which made it difficult for him to succeed. He was harassed and treated unfairly because people assumed he was homosexual.
3. A review of the applicant's record shows:
 - a. He enlisted in the Regular Army on 31 October 1984.
 - b. On 30 April 1985, he accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for failing to go at the time prescribed to his appointed place of duty. His punishment included forfeiture of \$133.00 and 14 days extra duty.
 - c. His record contains five DA Forms 4856-R (General Counseling Form) showing he was counseled on five separate occasions, from 6 May 1985 to 16 May 1985, for the following:

- Two on-post traffic violations
- Two occasions of failing to make physical training formation
- Writing dishonored checks

d. On 21 May 1985, he accepted NJP under the provisions of Article 15, UCMJ, for, from on or about 13 April 1985 to 21 April 1985, with intent to defraud and for procurement of lawful currency and things of value, wrongfully and unlawfully make checks for a total of \$225.00, knowing he did not or would not have sufficient funds for payment of said checks. His punishment included reduction to the rank/grade of private/E-1 and 14 days extra duty.

e. On 15 July 1985, he accepted NJP under the provisions of Article 15, UCMJ, for, from on or about 28 June 1985, was disrespectful in language towards Sergeant D____ M____, by saying to him “he would kick my fucking ass, and fuck you” or words to that effect. His punishment included forfeiture of \$162.00, 14 days extra duty, and 14 days restriction.

f. On 2 August 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, for patterns of misconduct. The commander informed the applicant if he were to be discharged, the least favorable characterization of service he could receive was an under honorable conditions (general).

g. On the same day, 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, for patterns of misconduct, 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.

h. On the same day, the applicant's immediate commander formally recommended he be separated under the provisions of AR 635-200, chapter 14-12b, for misconduct.

He noted the reason for the proposed separation, "It was the commander's judgement that the applicant would not participate satisfactorily in further training."

i. On an unspecified date, the applicant's intermediate commander recommended he be separated under the provisions of AR 635-200, chapter 14-12b, for misconduct.

j. On 29 August 1985, the separation authority approved the request for discharge, under the provisions of AR 635-200, chapter 14, paragraph 14-12b, for misconduct, with the issuance of a general discharge certificate.

k. The applicant was discharged on 13 September 1985. His DD Form 214 (Certificate of Release of Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, chapter 14, by reason of misconduct – pattern of misconduct, in the rank/grade of private/E-1, and his service was characterized as under honorable conditions. He completed 10 months and 13 days of net active service. He was assigned the separation code of "JKM" and the reenlistment code "RE-3". Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows he was awarded or authorized the following:

- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge (Hand Grenade)
- Army Service Ribbon

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. The pertinent Army regulation in effect at the time provided discharges under the provision of AR 635-200, chapter 14, where members were separated 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.

6. 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 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 the applicant's service record exhibits numerous instances of misconduct during his 10 month enlistment period. 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. Additionally, the Board found no error or injustice in the narrative reason for separation assigned by the commander during separation. Therefore, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
--------------	--------------	--------------	--

:	:	:	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.

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.

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 14-12b for Misconduct-Pattern of Misconduct would receive a separation code of "JKM."

4. 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//