

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 January 2024

DOCKET NUMBER: AR20230003020

APPLICANT REQUESTS: his under honorable conditions (general) discharge be upgraded to honorable. Additionally, he requests an 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)
- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Privacy Release Form
- Congressional Letter
- Army Review Boards Agency Letter

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 told his discharge would change to honorable after six months. He was going through medical issues at the time.
3. The applicant enlisted in the Regular Army on 7 September 1978 for three years. His military occupational specialty was 63N (Tank System Mechanic).
4. He served in Germany from 9 February 1979 through 4 September 1981.
5. Orders 68-13, dated 17 March 1981, discharged the applicant for reenlistment. His DD Form 214 for this period of service is not available for review.
6. The applicant reenlisted on 19 March 1981 for four years, in the grade of E-4.

7. The applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on:

- 7 March 1980 for wrongfully having in his possession one gram more or less, of marijuana on or about 20 February 1980; his punishment consisted of forfeiture of \$127.00 pay, and extra duty
- 21 May 1981 for wrongfully having in his possession one gram more or less, of marijuana on or about 22 April 1981; his punishment consisted of reduction to private first class/E-3, forfeiture of \$142.00 pay, restriction, and extra duty

8. The applicant was formally counseled on 17 February 1982 and 12 May 1982 for disobeying a lawful order, inability to perform quality work, deterioration of performance, apathetic attitude, low motivation and morale, and lack of initiative.

9. The applicant's immediate commander formally recommended the applicant's elimination separation on 25 May 1982, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 13, for unsuitability. He recommended the separation because the applicant had been a continual disciplinary problem and a poor job performer. His performance was substandard. The commander requested that a waiver of rehabilitative transfer be approved.

10. A Report of Mental Status Evaluation, dated 2 June 1982, shows the applicant had the mental capacity to understand and participate in board proceedings, was mentally responsible, and met retention standards. The applicant had been seen at Community Mental Health Activity for psychiatric evaluation. The staff psychiatrist remarked the applicant presented with no history of mental illness, and no psychiatric illness at the time. He was psychiatrically cleared for any administrative action deemed appropriate by command.

11. The applicant's immediate commander notified him on 7 June 1982 of his intent to recommend him for separation under the provisions of AR 635-200, Chapter 13, for unsuitability. He was advised of the rights available to him. The applicant acknowledged receipt of the notification.

12. The applicant consulted with legal counsel on 16 June 1982 and was advised of the basis for the contemplated action to accomplish his separation under the provisions of AR 635-200, Chapter 13, for unsuitability, the rights available to him, and the effect of action taken by him in waiving his rights.

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

b. He elected not to submit a statement in his own behalf.

13. The applicant's commander formally recommended his separation on 8 July 1982, under the provisions of AR 635-200, Chapter 13, for unsuitability. He recommended the request for waiver of rehabilitative transfer and counseling be approved.

14. The separation authority approved the request for waiver of rehabilitative transfer and directed the applicant be discharged and issued a under honorable conditions, General Discharge Certificate.

15. The applicant was discharged on 19 July 1982. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 13-4c(2), for unsuitability - apathy, defective attitude, or inability to expend effort constructively. He was assigned Separation Code JMJ with Reenlistment Code 3c and 3. His service was characterized as under honorable conditions (general). He completed 1 year, 4 months, and 1 day of net active service this period. His awards include the Army Service Ribbon and the Overseas Ribbon.

16. Regulatory guidance provides for separation due to unsuitability under the provisions of this chapter for inaptitude. Applicable to persons who are best described as inept, due to lack of general adaptability, want of readiness of skill, unhandiness, or ability to learn, personality disorder and apathy (lack of appropriate interest), defective attitudes, and inability to expend effort constructively.

17. The applicant provides a copy of his DD form 214 as discussed above and a Privacy Release Form and congressional letter shows he sought congressional assistance.

18. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

19. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, his previous denial by the Army Board for the Correction of Military Records (ABCMR), the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 19 July 1982 discharge characterized as under honorable conditions (general). He states: "Was told it would change to honorable after 6 months. Was going through a medical issue at the time."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 19 March 1981 and was discharged on 19 July 1982 under the provisions provided in paragraph 13-4c of AR 635-200, Discharge – Unfitness and Unsuitability (1 May 1982): Apathy (lack of appropriate interest), defective attitudes, and inability, to expend effort constructively.

d. No medical documentation was submitted with the application. Because of the period of service under consideration, there are no encounters in AHLTA or documents in iPERMS.

e. The applicant received an Article 15 on 22 May 1981 wrongful possession of marijuana.

f. He was counseled by 1LT G.R.K on 12 May 1982:

"You are being counseled regarding your behavior in connection with your job performance over the last two months.

Two months ago, your inability to perform quality work on assigned maintenance tasks on the M60A1 series tank led to your assignment as a light vehicle driver. During the last two months your performance has steadily deteriorated. Your assigned vehicle has been delayed from direct support maintenance primarily because of your apathetic attitude, low motivation & morale, and lack of initiative.

You have only performed specifically assigned tasks; of which the quality of work has been unsatisfactory (often requiring someone else to repair the same items). In every case, your work has to be checked by the motor sergeant to confirm your efforts since your quality is so poor. It has often been noted that you are unavailable for work during designated maintenance periods due to sick call, tardiness, or simply you cannot be located."

g. On 25 May 1982, his company commander recommended his discharge by reason of unsuitability under chapter 13 of AR 635-200:

"He has been a continual disciplinary problem and a poor job performer. PFC [Applicant]'s performance as a soldier during my tenure as Commander has been substandard. I request that a waiver of Rehabilitative Transfer be approved."

h. His pre-separation mental status evaluation completed on 2 June 1982. The psychiatrist documented a normal examination, opining:

“Service member was seen at Community Mental Health Activity for psychiatric evaluation. Service member presents with no history of mental illness. No psychiatric illness is present at this time • Service member is psychiatrically cleared for any administrative action deemed appropriate by Command.”

i. The request for his separation was approved by the brigade commander on 8 July 1982.

j. There is no evidence the applicant had any medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge; or which contributed to the overall poor performance which led to his involuntary administrative separation. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

k. There are no clinical encounters or medical diagnoses in JLV.

l. It is the opinion of the Agency Medical Advisor that a discharge upgrade is unwarranted.

BOARD DISCUSSION:

1. 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.

2. After reviewing the application, all supporting documents, and the evidence within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance on consideration of discharge upgrade requests. Based on the preponderance of the evidence, and in the absence of any mitigating factors such as post service accomplishments or letters of reference, the Board found that the character of service the applicant received upon separation was not in error or unjust.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below referencing corrections to the applicant's DD214 which will more accurately depict the military service of the applicant.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined 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.

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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 19 July 1982, is missing an important entry that may affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entries in item 18 (Remarks): SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE

REFERENCES:

1. Title 10, USC, 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. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.
 - a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
 - b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. 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.
4. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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 Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 13 provides that action will be taken to separate a member for unsuitability when it is clearly established that (1) In the judgment of his commander, he will not develop sufficiently to participate satisfactorily in further military training and/or become a satisfactory soldier, and (2) He meets retention medical standards. A member is subject to separation for unsuitability under the provisions of this chapter when one or more of the following conditions exist-inaptitude, applicable to persons who are best described as inept, due to lack of general adaptability, want of readiness of skill, unhandiness, or ability to learn; personality disorder; apathy (lack of appropriate interest), defective attitudes, and inability to expend effort constructively. Service was characterized as honorable or under honorable conditions.

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 Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; sexual assault; or sexual harassment. Boards are 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.

6. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 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 grounds.

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, 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//