

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 October 2023

DOCKET NUMBER: AR20230003409

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

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 21 February 1985

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, in effect, he now knows his actions and behavior were wrong. At the time of his discharge, he was young and immature.
3. The applicant enlisted in the Regular Army on 3 February 1982 for a 4-year period. The highest rank he attained was private first class/E-3.
4. On 18 May 1984, the applicant was observed going into the mess hall during the time he was supposed to be conducting physical training. He responded disrespectfully to a noncommissioned officer (NCO) when questioned. The NCO requested the applicant be given a formal counseling.
5. The applicant accepted non-judicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice, on 18 July 1984, for being disrespectful in language and using provoking words towards his superior NCO, on or about 5 July 1984. His punishment consisted of reduction to private/E-2, forfeiture of \$100.00 pay for two months, 45 days of extra duty, and 45 days of restriction.

6. The applicant was formally counseled on 24 October 1984 for leaving his toolbox unsecured.

7. The applicant accepted non-judicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice, on 16 November 1984, for failure to obey a lawful order, on or about 6 November 1984, and for leaving his appointed place of duty without authority, on or about 7 November 1984. His punishment consisted of reduction to private/E-1 (suspended until 3 June 1985), forfeiture of \$275.00 pay for two months, 45 days of extra duty, and 45 days of restriction. The applicant broke restriction on or about 26 December 1984. The suspension of reduction to private/E-1 was vacated.

8. The applicant was formally counseled on 31 December 1984 and 2 January 1985. Areas of emphasis covered in the counseling include:

- not completing assigned detail duties
- pattern of misconduct
- unsuitable behavior

9. A DA Form 3822-R (Report of Mental Status Evaluation), dated 10 January 1985, shows the applicant was psychiatrically cleared to participate in board proceedings.

10. The applicant's commander notified him on 31 January 1985 of his intent to initiate administrative separation action under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13, by reason of unsatisfactory performance. The applicant's commander advised him of his rights and the applicant acknowledged receipt of the notification.

11. On 2 February 1985, the applicant acknowledged he was advised by consulting counsel of the basis for the contemplated action to separate him for unsatisfactory performance under Army Regulation 635-200, Chapter 13, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights.

a. He waived consideration of his case by an administrative separation Board. He elected not to submit statements in his own behalf.

b. He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him. He further understood that, as the result of issuance of a discharge under other than honorable conditions, he may be ineligible for many or all benefits as a veteran under both Federal and State laws and that he may expect to encounter substantial prejudice in civilian life.

12. The applicant's immediate commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 13. The commander noted the

applicant's failure to repair, inability to obey orders, instances of formal counseling, and continued substandard performance as reasons for the recommended separation action.

13. On 7 February 1985, the separation authority approved the recommendation for discharge under the provisions of Army Regulation 635-200, Chapter 13, waived the rehabilitative transfer requirement, and directed the issuance of a DD Form 257A (General Discharge Certificate).

14. The applicant was released from active duty and transferred to the Individual Ready Reserve on 21 February 1985, under the provisions of Army Regulation 635-200, Chapter 13, by reason of unsatisfactory performance. His DD Form 214 confirms his service was characterized as under honorable conditions (general). He was credited with 3 years and 19 days of net active service. He was awarded or authorized the Army Service Ribbon and the Overseas Service Ribbon.

15. Soldiers may be separated under the provisions of Army Regulation 635-200, Chapter 13 when it is determined that they are unqualified for further military service because of unsatisfactory performance.

16. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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 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 sets forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 13 of this regulation provides for separation due to unsatisfactory performance when, in the commander's judgment, the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good

order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.

b. 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.

c. 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.

3. 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, 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//