

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 October 2023

DOCKET NUMBER: AR20230003457

APPLICANT REQUESTS: Upgrade of his under honorable conditions (general) discharge.

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Report of Separation from Active Duty)
- In-service certificates of training, completion, and appreciation
- Civilian training records, certificates of recognition, and resume

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 during his time of service, he served honorably with pride to the greatest extent possible. He became a medic, received the Expert Field Medical Badge, and was promoted to specialist/E-4. He followed his training from the military, he became a State certified Emergency Medical Technician-1 and a Respiratory Technician, Law Enforcement Officer, and a Correctional Officer. He received numerous awards from lifesaving to preventing suicide by law enforcement. He retired in 2017 and now works with the Veterans Affairs.

3. The applicant enlisted in the Regular Army on 28 September 1973, for 3 years. Upon completion of training, he was awarded military occupational specialty 91B (Medical Specialist).

4. On 22 August 1975, the applicant was notified by his immediate commander that actions were being initiated to discharge him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-37 (Expeditious Discharge Program (EDP)), with a General Discharge Certificate. As reasons for the proposed separation, his commander cited the applicant's drastic change in attitude,

apathy towards all efforts to correct his shortcomings, and his inability to cooperate with his chain of command in their effort to motivate him into a productive Soldier.

5. The applicant acknowledged receipt of the separation notification on the same date. He was advised of the rights available to him and the effect of waiving his rights. He voluntarily consented to the separation and elected not to submit a statement in his own behalf.

6. The applicant's commander formally recommended the applicant's separation from service under the EDP. Additionally, the commander noted the applicant had been counseled 15 times.

7. On 25 August 1975, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.

8. The separation authority approved the recommended action on 3 September 1975 and directed the issuance of a DD Form 257A (General Discharge Certificate).

9. The applicant was discharged on 16 September 1975. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 5-37, with Separation Program Designator code KMN [EDP] and Reenlistment Code 3. His service was characterized as under honorable conditions (general). He completed 1 year, 11 months, and 19 days of net active service this period. He was awarded or authorized the National Defense Service Medal, Sharpshooter Hand Grenade Qualification Badge, Marksman Qualification Badge M-16, and the Expert Field Medical Badge.

10. The applicant provides various civilian documents that detail his certifications, recognition, and professional accomplishments following his separation from the Army. These documents are provided in their entirety for the Board's review within the supporting documents.

11. 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.

BOARD DISCUSSION:

After reviewing the application, all supporting documents and the evidence found within the military record, the Board determined that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records and published DoD guidance for consideration of discharge upgrade requests. The Board considered the frequency and nature of his misconduct, the reason for his separation

and whether to apply clemency. The Board considered the period of the applicant's service and that the misconduct occurred almost fifty years ago. The Board considered the numerous letters of support and post-service accomplishments including numerous recognitions for work within law enforcement. After due consideration of the request, the Board determined the evidence presented sufficient to warrant a recommendation for relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending his DD214 to show his character of service as honorable.







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. 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. Paragraph 5-37 provided for the discharge of enlisted personnel whose performance of duty, acceptability for the Service, and potential for continued effective service fall below the standards required for enlisted personnel in the Army because of the existence of one or more of the following conditions: enlisted personnel who fail to be advanced to the grade of E-2 after 4 months of active duty, or enlisted personnel who fail to demonstrate potential to justify advancement to the grade of E-3. The philosophy of this policy is that commanders will be able to anticipate and preclude the development of conditions which clearly indicate that Soldiers concerned are becoming problems to an extent likely to lead to board or punitive action which could result in their separation under conditions which would stigmatize them in the future.

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/NR) 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, 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//