

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2024

DOCKET NUMBER: AR20230005117

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- a change to his narrative reason for separation to "Secretarial Authority" or "Commander's Discretion"
- A video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel Brief, with enclosures:
 - Power of Attorney, dated 30 December 2020
 - DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 7 July 1981
 - DA Form 2829 (Sworn Statement)
 - Request for Discharge for the Good of the Service, dated 2 June 1981
 - Bachelor of Science Degree, dated 26 October 2001
 - Master of Business Administration Degree, dated 3 December 2017
 - Cybersecurity Certificate, dated 15 November 2019
 - National Society of Leadership and Success Certificate, dated Spring 2021
 - Letter of Support, dated 19 January 2021

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, through counsel:

a. He was subjected to numerous instances of racial discrimination/harassment and theft by his white roommate. He brought this behavior to the attention of his command

and his leaders failed to take corrective action against his roommate. When he needed money to make necessary car repairs, he made the foolish decision to pawn off his roommate's TV after his roommate refused to repay him.

b. The separating authority failed to take these circumstances into account when punishing/separating him. This failure constitutes an arbitrary and capricious abuse of discretion which resulted in an excessively harsh punishment. He has made great strides in his professional and personal life over the course of the last 42 years, which justify upgrading his discharge at this time.

3. The applicant provides:

a. Power of attorney dated 30 December 2020, which shows he authorized his attorney to execute on his behalf all matters relating to and/or arising out of my employment by the federal government.

b. A DA Form 2823, which shows the applicant admitting to stealing and pawning his roommate's TV so he could get his car fixed.

c. Two collegiate degrees and two certificates, which show his post-service accomplishments.

d. A letter of support that attests to the applicant being a volunteer since 2018 with an organization that helps chronically ill children. His contributions have been invaluable to the achievement of the mission, and they are grateful for his support.

4. The applicant enlisted in the Regular Army on 25 July 1979.

5. He accepted nonjudicial punishment on/for:

a. 22 April 1980 for failing to go to his appointed place of duty.

b. 27 May 1980 for failing to go to his appointed place of duty.

c. Illegible date for failing to go to his appointed place of duty.

6. DA Form 3975 (Military Police Report), dated 5 May 1981 shows:

a. Through investigation, the applicant removed another Soldier's TV from the barracks and transported it to the handy loan pawn shop where he pawned the item for \$50.00 on 28 April 1981. They were contacted by the Police Department of the item being pawned and placed it on police hold.

b. The applicant reported to this office and was advised of his legal rights, which he chose to waive. He admitted to pawning the TV at the pawn shop. He was processed for the offense and later released to his unit. On 29 April 1981, he was accompanied by the investigator to the pawn shop and paid the amount to retrieve the TV. The applicant released the TV to the military police investigator who in returned released it to the Soldier.

7. A DD form 458 (Charge Sheet) shows charges and specifications were preferred against the applicant:

a. Charge I: Violation of the UCMJ, Article 90 (Assaulting or Willfully Disobeying a Superior Officer), Specification: the applicant did on or about 15 April 1981, having received a lawful command from a commissioned officer not to sell his car to an inmate, nor have business transaction with an inmate, willfully disobeyed the same.

b. Charge II: Violation of the UCMJ, Article 121 (Larceny and Wrongful Appropriation), Specification: the applicant did on or about 2 April 1981, steal 1 General Electric color TV of a value of about \$275.00, the property of another Soldier.

8. On 2 June 1981, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the UCMJ, the possible effects of a discharge under other than honorable conditions if this request was approved, and of the procedures and rights available to him. Following this consultation, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service-in lieu of court-martial. He made the following acknowledgements in his request:

a. He was making this request of his own free will and had not been subjected to any coercion whatsoever by any person. He further acknowledged he understood the elements of the offenses charged and he was guilty of the charge(s) against him or of a lesser included offense which also authorized the imposition of a bad conduct or dishonorable discharge.

b. He understood that if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

9. A Report of mental status evaluation, dated 5 June 1981, shows the applicant had the mental capacity to understand and participate in administrative proceedings deemed appropriate by his command.

10. The applicant's immediate and intermediate commanders recommended approval of his request for discharge in lieu of trial by court-martial on 10 June 1981, and further recommended an under other than honorable conditions discharge.

11. Through statement of option, dated 11 June 1981 the applicant elected not to have a medical examination prior to separation.

12. On 17 June 1981, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, Chapter 10 and ordered the issuance of an under other than honorable condition characterization of service and the applicant's reduction to private/E-1.

13. The applicant was discharged on 7 July 1981, under AR 635-200, Chapter 10. His DD Form 214 shows he completed 1 year, 11 months, and 13 days of active service. It also shows in:

- item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Marksman Marksmanship Qualification Badge with Rifle Bar, Marksman Marksmanship Qualification Badge with Pistol Bar, Expert Marksmanship Qualification Badge with Hand Grenade Bar
- item 24 (Character of Service): under other than honorable conditions
- item 26 (Separation Code): JFS
- item 27 (Reenlistment Code): RE-3
- item 28 (Narrative Reason for Separation): Administrative Discharge – Conduct Triable by Court-Martial

14. There is no indication the applicant applied to the Army Discharge Review Board within that Board's 15-Year statute of limitations.

15. Regulatory guidance provided a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial.

16. 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:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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. One potential outcome was to deny relief based on the applicant's misconduct. However, upon further review of the applicant's petition and available military records, the Board determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct. The Board noted the applicant's post service achievements of earning his bachelor's and master's degree as well as the character letter of support attesting to his honorable conduct and community contributions since his discharge.

2. The Board found the applicant accepts responsibility for his actions and was remorseful with his application, demonstrating he understands his actions were not that of all Soldiers. The Board agreed an under honorable conditions (General) character of service is warranted, as he did not meet the standards of acceptable conduct and performance of duty for Army personnel making him suitable for an Honorable characterization. The Board found a change to his narrative reason for separation to secretarial authority and his separation code to JFF is warranted. Therefore, the Board granted relief.

3. 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.

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 relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by re-issuing the applicant his DD Form 214 for the period ending 7 July 198, to show in:

- item 24(Character of Service) Under Honorable Conditions (General)
- item 26 (Separation Code) JFF
- item 28 (Narrative Reason) Secretarial Authority

3/4/2024

X

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 635-200 (Personnel Separation-Enlisted Personnel) 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 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Service 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.

4. Army Regulation 15-185 (ABCMR), paragraph 2-11, states applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//