

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 September 2023

DOCKET NUMBER: AR20230005534

APPLICANT REQUESTS: reconsideration of his earlier request for upgrade of his under other honorable conditions discharge to general, under honorable conditions or honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD: DD Form 149 (Application for Correction of Military Record), 23 February 2023.

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20180011197, 15 October 2019.
2. The applicant states, in effect the denial of his previous application seemed to be based on the last half of his service and did not consider his entire service. He is about to retire after 32 years at his employment and needs affordable housing for his family. An upgrade would provide him that opportunity.
3. The applicant provided a copy of his DD Form 149 application outlined above, in which he provided new arguments which warrant Board review at this time.
4. The applicant's records contain sufficient evidence to support an amendment to his DD Form 214 for the period ending on 1 February 1980 and will be listed in administrative notes.
5. A review of the applicant's available records shows:
 - a. On 9 April 1976, he enlisted in the Regular Army for 3 years at age 18. He completed Basic Combat Training, he completed Advanced Individual Training, and he was awarded military occupational specialty 05C (Radio Teletype Operator).
 - b. He was promoted on 9 August 1976 to private 2/E-2, on 31 December 1976 to private first class/E-3, and on 25 September 1977 to Specialist/E-4.

c. On 2 February 1978, he permanently changed station to Europe (Germany).

d. On 29 October 1978, he was honorably discharged from active duty (AD) in order to reenlist. The DD Form 214 (Certificate of Release or Discharge from Active Duty) showing his first period of honorable service is not contained in his available records.

e. Reenlistment Orders 151-1, issued by Headquarters (HQ), United States Army Element, Central Army Group, 26 October 1978, show he was assigned to Company B, 97th Signal Battalion and discharged in order to immediately reenlist effective the next day.

f. On 30 October 1978, he reenlisted for 4 years beginning at grade/pay grade specialist/E-4. His DD Form 4 (Enlistment/Reenlistment Agreement - Armed Forces of the United States) shows he completed 2 years, 6 months, and 21 days of prior active military service and 15 days of total inactive military service.

g. He accepted company grade nonjudicial punishment (NJP) under provisions of Article 15 of the Uniform Code of Military Justice:

(1) On 15 February 1979 for failing to go to his place of duty at Coleman Barracks, Sandhofen Germany, on or about 0645 hours on 15 February 1979. His punishment consisted of reduction to PFC/E-3 (suspended until 29 March 1979) and extra duty for 7 days. He did not appeal this punishment.

(2) On 25 June 1979 for absenting himself from his place of duty physical training formation, Headquarters and Headquarters Company (HHC), 2d Battalion, 19th Infantry, Fort Stewart, on or about 0630 hours, 19 June 1979. His punishment consisted of reduction to PFC/E-3 (suspended for 90 days), forfeiture of \$100.00 (\$50.00 of which was suspended for 90 days), and extra duty for 14 days (7 days of which was suspended for 90 days). He did not appeal this punishment.

(3) On 30 July 1979, supplemental NJP, in which suspension of the portions of punishment he received from NJP on 25 June 1979 was vacated and punishment remitted; forfeiture of \$50.00, reduction to PFC/E-3, and 7 days of extra duty.

(4) On 12 October 1979 for failing to go to the company commander's office at HHC, 2d Battalion, 19th Infantry, Fort Stewart on or about 1700 hours on 10 October 1979. His punishment consisted of reduction to PV2/E-2, forfeiture of \$109.00, and extra duty with restriction for 14 days. He did not appeal this punishment.

(5) On 18 December 1979 for failing to go to brigade detail and for failing to go to morning formation at HHC, 2d Battalion, 19th Infantry, Fort Stewart, at 0630 hours on 4 December 1979. His punishment consisted of reduction to PVT/E-1, forfeiture of

\$110.00, and extra duty with restriction for 14 days. On 18 December 1979 he appealed this punishment and presented matters for consideration by his company commander. On 21 December 1979 his battalion commander granted his appeal in part with extra duty and restriction to begin on 2 January 1980.

h. The separation packet leading to a discharge from the Army under provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), paragraph 14-33b(1) and paragraph 14-33b(2); the commander's notification memorandum and his acknowledgement and election of rights, and the separation authority approval memorandum, are not contained in the available records.

i. Orders 21-40 issued by HQ, 24th Infantry Division, Fort Stewart, on 29 January 1980, reassigned him to the U.S. Army separation transfer point under the provisions of Army Regulation 635-200 with a date of discharge of 1 February 1980.

j. On 1 February 1980 he was discharged. His DD Form 214 shows he was discharged under the provision of Army Regulation 635-200, paragraph 14-33b(1) and paragraph 14-33b(2) with a characterization of service of under other than honorable conditions, a narrative reason of misconduct-frequent incidents of a discreditable nature with military authorities and an established patten of shirking, and a separation code of JKA/JKJ. He completed 1 year, 3 months, and 2 days of net active service with 2 years, 6 months, and 21 days of prior honorable service. He was awarded the Expert Marksman Qualification Badge with Rifle Bar (M-16A1) and Sharpshooter Qualification Badge with Hand Grenade Bar.

k. On 15 October 2019, in ABCMR Docket Number AR20180011197, the Board found the applicant's discharge characterization was warranted as a result of the misconduct.

l. On 6 July 2021, the Chief, Army Service Center, issued the applicant a statement of military service, showing he completed honorable service between 9 April 1976 and 29 October 1978, and he was honorably discharged at grade Specialist 4/E-4 in order to reenlist.

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.

7. MEDICAL REVIEW:

a. Background: The applicant is requesting a reconsideration of his earlier request for upgrade of his under other than honorable conditions discharge to general, under honorable conditions or honorable. The applicant indicated other mental health as being

related to his request for upgrade. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted in the Regular Army on 9 April 1976. The applicant rapidly promoted to E-4 by 25 September 1977. On 29 October 1978, he was honorably discharged from active duty (AD) in order to reenlist. On 30 October 1978, he reenlisted.
- On 15 February 1979, he accepted company grade nonjudicial punishment (NJP) for failing to go to his place of duty at Coleman Barracks, Sandhofen Germany, on or about 0645 hours on 15 February 1979.
- On 25 June 1979, he accepted NJP for absenting himself from his place of duty physical training formation, Headquarters and Headquarters Company (HHC), 2d Battalion, 19th Infantry, Fort Stewart, on or about 0630 hours, 19 June 1979.
- On 12 October 1979, he accepted NJP for failing to go to the company commander's office at HHC, 2d Battalion, 19th Infantry, Fort Stewart on or about 1700 hours on 10 October 1979.
- On 18 December 1979, he accepted NJP for failing to go to brigade detail and for failing to go to morning formation at HHC, 2d Battalion, 19th Infantry, Fort Stewart, at 0630 hours on 4 December 1979.
- The separation packet leading to discharge is missing from his available records.
- On 1 February 1980 he was discharged under AR 635-200, paragraph 14-33b(1) and paragraph 14-33b(2) with a characterization of service of under other than honorable conditions, a narrative reason of misconduct-frequent incidents of a discreditable nature with military authorities and an established patter of shirking, and a separation code of JKA/JKJ.
- On 15 October 2019, in ABCMR Docket Number AR20180011197, the Board found the applicant's discharge characterization was warranted as a result of the misconduct.

b. Review of Available Records Including Medical: The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, his ABCMR Record of Proceedings (ROP), DD Form 214, as well as documents from his service record and separation. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV), though minimal data is available. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts other mental health as being related to his request for upgrade. There are no electronic health records (EHR) from his time in service to review, which is to be expected given the timeframe he served. He did not provide any

medical documentation to support his assertion of mental health concerns during his period of service. And his service records did not include any physical or mental health evaluations as part of his separation process.

d. Per the applicant's VA EHR, he is not service connected. He has not been engaged in any mental health care through the VA and he holds no mental health diagnoses with the VA. However, given the characterization of his discharge, he would not typically be eligible for most VA benefits. No other medical records were provided. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a condition or experience at the time of service that mitigated his discharge. However, he contends other mental health concerns are related to his request for upgrade, and per Liberal Consideration guidance, his contention is sufficient to warrant the Board's consideration.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes, applicant asserts "other mental health" is related to his request for an upgrade to his discharge.

(2) Did the condition exist or experience occur during military service? Unknown. The applicant did not specify when he has experienced other mental health concerns.

(3) Does the condition or experience actually excuse or mitigate the discharge? No/recommend clemency. The applicant asserted other mental health was related to his request for upgrade but did not provide any other information regarding this assertion. It is unclear if the applicant is asserting mental health issues during his time in service or now. Regardless, there is no evidence beyond self-report that the applicant was experiencing a mitigating condition during active service. There was no evidence provided that indicates he has ever been diagnosed with any mental health condition. The applicant had numerous failures to report, which can indicate avoidance and can be a sequelae to several mental health concerns, such as anxiety, depression or PTSD. But this is not sufficient to establish a history of a condition during active service. However, per Liberal Consideration guidance, his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, 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 for liberal

consideration of discharge upgrade requests. The facts and circumstances surrounding his separation are not available. However, his DD Form 214 shows he was discharged from active duty with a characterization of service of under other than honorable conditions, a narrative reason of misconduct-frequent incidents of a discreditable nature with military authorities and an established patter of shirking, and a separation code of JKA/JKJ. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The applicant provided insufficient evidence of post-service achievements, letters of reference/support, or evidence of a persuasive nature in support of a clemency determination. In the absence a separation packet or the facts surrounding his separation, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 to amend the decision of the ABCMR set forth in Docket Number AR20180011197, 15 October 2019.

■ [REDACTED]

[REDACTED] [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. Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), in effect at the time provided the authority and general provisions governing the separation of enlisted personnel prior to the end of their ETS to meet the needs of the service and its members. It provided the criteria governing issuance of honorable, general, and under other than honorable discharge certificates.

a. Paragraph 1-13(a) provided an honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude.

b. Paragraph 1-13(b) provided a general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. The recipient of a general discharge is normally a member whose military record and performance is satisfactory. The member may have had frequent nonjudicial punishments but not for serious infractions. He may be a troublemaker, but his conduct is not so bad as to require discharge for cause or a discharge under less than honorable conditions.

c. Paragraph 1-13(c) provided a discharge under other than honorable condition is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, for security reasons, or for the good of the service.

d. Paragraph 14 Separation for Misconduct. This chapter establishes policy and prescribes procedures for the elimination of enlisted personnel for misconduct by reason of fraudulent enlistment/reenlistment, conviction by civil court (members who have been initially convicted or adjudged juvenile offenders), desertion and absence without leave, and other acts or patterns of misconduct.

e. Paragraph 14-33(b). Other Misconduct. Members are subject to separation under the provisions of this section for patterns of misconduct.

f. Paragraph 14-33(b)1, for frequent incidents of discreditable nature with civil or military authorities.

g. Paragraph 14-33(b)2, for an established pattern of shirking.

2. Army Regulation 635-5 (Separation Documents), then in effect, prescribed the separation documents which were prepared for individuals upon retirement, discharge,

or release from active military service or control of the Army. It established standardized policy for preparing and distributing DD Form 214.

a. A DD Form 214 would be prepared for all personnel at the time of their retirement, discharge, or release from the Active Army. A DD Form 214 would not be prepared for enlisted members discharged for immediate reenlistment in the RA.

b. In item 18 (Remarks), use the remarks section for entries required by Headquarters Department of the Army for which a separate item is not available on the form and for completing entries that are too long for their blocks.

c. Table 2-1. DD Form 214 Preparation Instructions. In block 18 (Remarks). Use the remarks section for entries required by HQDA for which a separate item is not available on the form and completing entries that were too long for their blocks. Enter a list of enlistment periods for which a DD form 214 was not issued under the provisions of paragraph 1-4b(5). Example: immediate reenlistments this period: 761210-791001; 791002-821010.

3. Army Regulation 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for item 18 to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment).

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 (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. 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 based on 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. 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//