

IN THE CASE OF: ██████████

BOARD DATE: 11 January 2024

DOCKET NUMBER: AR20230006082

APPLICANT REQUESTS: reconsideration of his previous requests for an upgrade of his under honorable conditions (general) characterization of service. Additionally, he requests a personal appearance before the Board.

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

- request for reconsideration, dated 21 March 2023
- Army Board for Correction of Military Records (ABCMR), Record of Proceedings (ROP), dated 3 February 2022
- letter, ABCMR, dated 29 September 2022

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AR20190014716 on 26 June 2020 and AR20210009896 on 3 February 2022.

2. In a new request for reconsideration, the applicant provides the following statements, arguments, and questions, in effect:

a. The ABCMR states they reviewed his request for reconsideration on 3 February 2022. All three Board members (██████████) initialed DENY APPLICATION. The decision letter was dated 29 September 2022. The ABCMR did not have to wait seven months to come to a decision.

b. The ABCMR states the decision in his case is final, however, the Board did not address any of the issues he mentioned in paragraph 2 through 2hh of the ROP in his previous request for reconsideration. The case is not final. He will be filing a claim against the ABCMR, on the grounds of racial discrimination, with the National Association for the Advancement of Colored People (NAACP) and the American Civil Liberties Union (ACLU) for the injustice perpetrated against him. His preponderance of evidence was overlooked and not considered by the Board.

c. Regarding the infractions dated 6 February 1973, 19 November 1973, and 3 December 1973, there were no encounters of him sleeping on duty at Tower 1, and he never disobeyed a lawful order. Master Sergeant who? First Sergeant who? This was wrongfully added to make it appear that he was insubordinate.

d. All the issues occurred after he declined to reenlist for another six years. He was a military policeman (MP) who rarely went on patrol. His entire service was spent as a turnkey or tower guard. Why would he reenlist to be a tower guard for another six years?

e. Regarding paragraphs 6 and 12 of the previous ROP, 4 February 1973 was a Sunday. If he was drunk on duty, he would have been drunk at roll call and not allowed to be on duty. He has a hard time believing the date. He declined reenlistment after he was a specialist/E-4, which is when the sabotage happened.

f. Regarding paragraph 13, there would be no acts of valor, significant achievement, or service warranting special recognition as a tower guard or turnkey if no one was trying to escape.

g. Regarding paragraphs 7 and 17, his preponderance of evidence provided was his commander threatening him with separation action if he did not accept their offer. They listed more than one instance of drunk on duty, and he would argue many tower guards inadvertently closed their eyes from time to time. He was singled out because he refused to reenlist and because he is a black man.

h. Regarding paragraph 19, he was waiting for a formal hearing before the Board, but he never received one.

i. In the initial letter sent to him, there was a place for a notary stamp to be certified as a true and complete record of proceedings.

j. He was a victim of the test of a new discharge program, the Expeditious Discharge Program (EDP).

k. Based upon how he was railroaded out of the military and his testimony was overlooked by the Board, the same Jim Crow exclusion still exists today, Whites Only.

l. He was not offered the opportunity to consult with a Judge Advocate General (JAG) Officer. Nor did he receive a DD Form 257A [sic 27A] (General Discharge Certificate). The previous ROP (paragraph 2n) notes DD Form 27A. This is his preponderance of evidence. They didn't even know the form number that he did not receive.

m. He intends to file a claim against the Department of the Army and the Department of Veterans Affairs for abruptly cutting off his benefits when he was succeeding as a student.

n. This is another example of systemic laws and institutional racism used to freeze/lock out the African American/Black Man, the only non-immigrants, despite the 13th, 14th, and 15th Amendments of the Constitution, the Civil Rights and Voting Acts of 1964 and 1965, and the Fair Housing Laws of 1968, redlining still exists today.

3. The applicant was inducted into the Army of the United States on 25 April 1972. Upon the completion of his initial entry training, he was awarded the primary specialty 95C (Correctional Specialist) and the secondary specialty 95B (Military Policeman).

4. The applicant was promoted to specialist/E-4 on 13 October 1972 which was the highest rank he attained.

5. Nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice was imposed against the applicant on three occasions:

a. On 6 February 1973 for one specification of being found drunk while on duty as a Correctional Specialist, on or about 4 February 1973. His punishment consisted of reduction to private first class/E-3 and forfeiture of \$75.00 pay per month for one month-suspended for one month. The applicant's appeal was granted in part. The portion of the punishment providing for reduction to private first class/E-3 was suspended for 150 days.

b. On 19 November 1973 for one specification of being found sleeping at his appointed guard post, to wit: Tower 1, U.S. Army Area Confinement Facility, Fuerth, on or about 19 November 1973. His punishment consisted of reduction to private/E-2 (suspended for sixty days) and forfeiture of \$30.00 pay. The suspension of reduction to private/E-2 was vacated, and the unexecuted portion of the punishment was ordered duly executed on 4 December 1973.

c. On 11 December 1973 for one specification of being found sleeping at his appointed guard post, to wit: Tower 1, U.S. Army Area Confinement Facility, Fuerth, and for willfully disobeying a lawful order from Master Sergeant [REDACTED], his superior non-commissioned officer, to report to the office of First Sergeant [REDACTED] on or about 3 December 1973. His punishment consisted of reduction to private/E-1, forfeiture of \$50.00 pay, and 14 days of extra duty.

6. The applicant's immediate commander notified the applicant on 2 January 1974 that he was initiating action to separate him from service under the provisions of Department of the Army Letter (DALTR), DAPE-MPE-PS, subject: Expeditious Discharge Program

(EDP) Reports Control Symbol CSG PA-1262 (Test), dated 20 August 1973, with the issuance of a General Discharge Certificate. As the specific reasons for the proposed action, the commander included the applicant's history of repeated sleeping while on duty and drunk on duty offenses and receipt of four Articles 15 (the service record shows three occasions of Article 15 proceedings with four specified violations). Paragraph three of the notification specifies the applicant's right to consult a JAG officer prior to completing acknowledgment.

7. On the same date, the applicant acknowledged receipt of the separation notification. He was advised of the rights available to him and the effect of waiving his rights. His initials and signature on the acknowledgement verify that he voluntarily accepted the recommended discharge, waived the right to submit a statement in his own behalf, understood that an under honorable conditions (general) discharge could lead to substantial prejudice in civilian life, and acknowledged that he had been provided the opportunity to consult with a JAG Officer. He further acknowledged if he declined to voluntarily accept the recommended discharge, he may be processed for separation under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13 (Separation for Unfitness or Unsuitability).

8. Subsequently, the applicant's immediate and intermediate commanders recommended the applicant's separation from service with a general discharge for apathy.

9. On 22 January 1974, the separation authority approved the recommended separation action and directed the applicant be discharged for apathy with the issuance of a DD Form 27A [sic] (General Discharge Certificate).

10. Accordingly, the applicant was discharged on 13 February 1974, under the provisions of Army Regulation 635-200, DALTR DAPE-MPE-PS 73/8. His DD Form 214 confirms his service was characterized as under honorable conditions, with separation program designator 775 and reenlistment code RE-3. He was credited with 1 year, 9 months, and 19 days of net active service this period, with foreign service in Germany from 15 November 1972 to 14 April 1974.

11. The Army Discharge Review Board reviewed the applicant's military record on or about 19 September 1974 and determined the applicant was properly discharged.

12. The ABCMR reviewed the applicant's request for an upgrade of his characterization of service on 26 June 2020. The Board considered the applicant's statement, his record and length of service, the frequency and nature of his misconduct, and the reason for his separation. The Board found insufficient evidence of in-service mitigating factors to overcome the applicant's misconduct. Based upon a preponderance of evidence, the

Board determined that the character of service the applicant received was not in error or unjust. The Board denied his request.

13. The applicant petitioned the ABCMR to reconsider his request for an upgrade of his characterization of service. The Board reconsidered his case on 3 February 2022. Based upon the short term of the honorable service completed prior to the pattern of misconduct leading to the applicant's separation, the Board concluded there was insufficient evidence of an error or injustice which would warrant a change in his characterization of service. The Board denied his request.

14. U.S. Army Europe initiated the test of the EDP in 1973. It gave commanders the opportunity to separate unproductive Soldiers after they had served between six and 36 months. In 1975, Headquarters, Department of the Army, extended the program Army-wide, and it was added to Army Regulation 635-200, Chapter 5 (Separations for the Convenience of the Government). Individuals discharged under the EDP were issued either an under honorable conditions (general) or honorable character of service.

15. The ABCMR Record of Proceedings is a formal official government document and does not require a "Notary Stamp" to be certified as a true and complete record of the proceedings. The chairperson's signature serves to verify the true and complete record of the proceedings.

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

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. The Board again carefully considered the applicant's request, 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 again found insufficient evidence of in-service mitigating factors in support of a clemency determination. Based on a preponderance of the evidence, the Board again 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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Numbers AR20190014716 on 26 June 2020 and AR20210009896 on 3 February 2022.

4/1/2024

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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. Army Regulation 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 has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.
2. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 5-31 provided for the discharge of enlisted personnel who had completed at least six months but less than 36 months of active duty and who had

demonstrated that they could not or would not meet acceptable standards required of enlisted personnel in the Army because of the existence of one or more of the following conditions: poor attitude, lack of motivation, lack of self-discipline, inability to adapt socially or emotionally, or failure to demonstrate promotion potential. No individual would be discharged under this program unless the individual voluntarily consented to the proposed discharge. Individuals discharged under this provision of the regulation were issued either a general or honorable discharge.

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. In 1973, the Department of the Army authorized the Commander in Chief, U. S. Army Europe to test a new discharge program, entitled the Expeditious Discharge Program (EDP). This program provided that an individual who had completed at least 6 months, but less than 36 months of active duty and who demonstrated (by poor attitude, lack of motivation, lack of self-discipline, inability to adapt socially or emotionally or failure to demonstrate promotion potential) that they could not or would not meet acceptable standards could be separated under the EDP. Such personnel were issued a general or honorable discharges, as appropriate. A recommendation for a general discharge had to be initiated by the immediate commander and the individual had to be afforded the opportunity to consult with legal counsel. The program was subsequently expanded Army wide in 1975 and included in Army Regulation 635-200, Chapter 5. The EDP program was discontinued in 1982.

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