

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 February 2024

DOCKET NUMBER: AR20230007036

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) and military identification card
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 18 February 1982
- Character Letter

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 provides:

a. Two identification cards, with picture.

b. A character letter that attests to his selfless service supporting Veterans and his importance to the community. This letter is provided in its entirety for the Board's review within the supporting documents.

3. Having had previous honorable service in the Army National Guard, the applicant enlisted in the Regular Army on 28 April 1981.

4. On 22 December 1982, the applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for failing to go at the time prescribed to his appointed place of duty, on or about 15 December 1982 and on or about 16 December 1982; and for going from his appointed place of duty without

authority, on or about 17 December 1982. His punishment included forfeiture of \$164.00 for 1 month, and 14 days restriction and extra duty.

5. The applicant's commander notified the applicant on 20 January 1983, that he was initiating actions to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13, for unsatisfactory performance.

6. The applicant consulted with counsel and was advised of the basis for the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him. He declined to submit a statement in his own behalf.

7. On 2 February 1983, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

8. On 2 February 1983, the applicant accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty, on or about 28 January 1983. His punishment included forfeiture of \$150.00 for 1 month, reduction in grade to E-2, and 14 days restriction and extra duty.

9. On 9 February 1983, the applicant's commander formally recommended his separation under the provisions of AR 635-200, Chapter 13. As the specific reasons, his commander noted the applicant continually failed to be at the proper place at the proper time, and on multiple occasions, he left his place of duty without informing his supervisor. Additionally, rehabilitation efforts were unsuccessful.

10. Consistent with the chain of command recommendations, the separation authority approved the recommended separation action on 11 February 1983, with his service characterized as under honorable conditions (General).

11. The applicant was discharged on 18 February 1983. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 13, for unsatisfactory performance. His service was characterized as under honorable conditions (General). He was assigned Separation Code LHJ and Reentry Code 3. He completed 1 year, 9 months, and 21 days of net active service this period. His DD Form 214 also shows he was awarded or authorized:

- Parachutist Badge
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Army Service Ribbon

12. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. Based on a preponderance of the evidence, his supporting documentation, and the reasons for his discharge, the Board determined that the characterization of service the applicant received upon separation should be corrected.

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 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 reissuing the applicant a DD Form 214, for the period ending 18 February 1983, showing a characterization of service as honorable.

[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. 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 Separations – Enlisted Personnel) sets forth the requirements for the administrative 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. Chapter 13 provided for separation due to unsatisfactory performance when in the commander's judgment the individual would not become a satisfactory Soldier; retention would have an adverse impact on military discipline, good order and morale; the service member would be a disruptive influence in the future; the basis for separation would continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, was unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation would be characterized as honorable or under honorable conditions.

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/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 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.

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//