

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 February 2024

DOCKET NUMBER: AR20230007467

APPLICANT REQUESTS: an 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 from the Armed Forces of the United States), 11 April 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 19 December 1984

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 due to issues at his home, he felt it was in the best interest to be there. His home was affecting his military life and he was unable to give the proper work and dedication needed at that time.
3. The applicant enlisted in the Regular Army on 11 January 1980. He subsequently conducted an oath of extension on 4 August 1981. He reenlisted on 1 March 1984 for a 6-year period. The highest rank he attained was sergeant/E-5.
4. The applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on 14 November 1984, for absenting himself without leave on or about 7 November 1984 and remaining absent without leave (AWOL) until on or about 13 November 1984. His punishment consisted of reduction to specialist/E-4, forfeiture of \$462.00 per month for 2 months, 45 days of extra duty, and 45 days of restriction.
5. He accepted NJP under the provisions of Article 15 of the UCMJ, on 5 December 1984, for disobeying a lawful order from a noncommissioned officer on or about

15 November 1984. His punishment imposed was reduction to private first class/E-3 and forfeiture of \$200.00.

6. The applicant was notified on 7 December 1984, by his immediate commander of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel) Chapter 13, by reason of unsatisfactory performance. The reason for the proposed separation was the applicant's inability to conform to military discipline as shown by his numerous counseling statements.

7. On the same date, the applicant acknowledged receipt of the proposed separation notification and was advised by consulting counsel of the basis for the contemplated action to separate him for unsatisfactory performance under AR 635-200, Chapter 13, and its effects; of the rights available to him; and the effect of any action in waiving his rights.

a. He waived consideration and a personal appearance of his case by an administrative separation Board. He also elected not to submit statements in his own behalf.

b. He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him. He further understood that, as the result of issuance of a discharge under other than honorable conditions, he may be ineligible for many or all benefits as a veteran under both Federal and State laws and that he may expect to encounter substantial prejudice in civilian life.

8. The applicant's immediate and intermediate commander formally recommended his separation under the provisions of AR 635-200, Chapter 13. They requested a waiver of the rehabilitative transfer.

9. On 14 December 1984, the separation authority approved the recommendation for discharge under the provisions of AR 635-200, Chapter 13, waived the rehabilitative transfer requirement, and directed the issuance of a General Discharge Certificate.

10. The applicant was discharged on 19 December 1984, under the provisions of AR 635-200, Chapter 13, by reason of unsatisfactory performance. His DD Form 214 shows his service was characterized as under honorable conditions (General) with a separation code "JHJ" and a reenlistment code of "RE 3, 3B, and 3C". He was credited with 4 years, 11 months, and 3 days of active service with time lost from 7 November 1984 to 12 November 1984. He was awarded or authorized the Humanitarian Service Medal, NCO Professional Development Ribbon (Numeral 2), the Army Good Conduct Medal, Expert Marksmanship Qualification Badge with Hand Grenade Bar, and Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16).

11. Regulatory guidance states Soldiers may be separated under the provision of AR 635-200, Chapter 13 when it is determined that they are unqualified for further military service because of unsatisfactory performance.

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 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 Board noted the applicant's contention; however, based on a preponderance of the evidence, the Board determined the characterization of service the applicant received upon separation was not in error or unjust.

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 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 for correction of the records of the individual concerned.

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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.

ADMINISTRATIVE NOTE(S):

The applicant's records contain sufficient evidence to support corrections now show on his DD Form 214. His DD Form 214, for the period ending 19 December 1984, will be administratively corrected without Board action to show in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 800111 UNTIL 840229

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 (AR) 635-5 (Personnel Separations), 15 August 1979, in effect at the time did not provide for an additional entry for continuous honorable active service, when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable. However, an interim change, published on 2 October 1989 does provide for such an entry.

3. AR 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

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

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.

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/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, Boards 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//