

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 February 2024

DOCKET NUMBER: AR20230007746

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. Additionally, he requests an appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Separation from Active Duty)

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 there was injustice with his discharge. The first sergeant and captain, who were white, stated they were going to get him. They did not like him.
3. On 1 March 1977, the applicant enlisted in the Regular Army. Upon completion of training, he was awarded military occupational specialty 13B (Cannon Crewman).
4. On 9 February 1978, he accepted non-judicial 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 3 February 1978. His punishment included reduction in grade to E-2, forfeiture of \$100.00 per month for one month, and 14 days restriction and extra duty.
5. On 17 March 1978, he 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 11 March 1978. His punishment included reduction in grade to E-1, forfeiture of \$90.00 per month for one month, and 14 days restriction and extra duty.

6. On 13 July 1978, he accepted NJP under Article 15 of the UCMJ, for being disrespectful in language toward his superior noncommissioned officer, on or about 27 June 1978. His punishment included reduction in grade to E-2, forfeiture of \$103.00 per month for one month, and 14 days restriction and extra duty.

7. On 14 August 1978, he accepted NJP under Article 15 of the UCMJ, for being disrespectful in language toward his superior noncommissioned officer, on or about 29 July 1978; and failing to go at the time prescribed to his appointed place of duty, on or about 8 August 1978. His punishment included reduction in grade to E-1, forfeiture of \$198.00 per month for two months, and 20 days restriction.

8. On 27 October 1978, he accepted NJP under Article 15 of the UCMJ, for being absent without leave from on or about 10 October 1978, until on or about 11 October 1978. His punishment included forfeiture of \$92.00 per month for one month, and 14 days restriction and extra duty.

9. On 5 January 1979, he 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 4 January 1979. His punishment included forfeiture of \$75.00 per month for one month, and 14 days extra duty.

10. On 6 August 1979, the applicant's commander notified the applicant that he was recommending him for separation from the service under the provisions of Army Regulation 635-200 (Personnel Separation – Enlisted Personnel), Chapter 14, paragraph 14-33, for misconduct – frequent incidents of a discreditable nature with civil or military authorities.

11. The applicant's record is void of an election of rights memorandum acknowledging he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him. Additionally, the applicant's record is void of the separation authority's memorandum approving the recommended discharge.

12. The applicant was discharged on 15 October 1979. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-33b(1), for frequent involvement in incidents of a discreditable nature with civil or military authorities. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Program Designator JKA and Reentry Code 3. He completed 2 years, 7 months, and 15 days of net active service this period.

13. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

1. The Board reviewed the applicant's request to upgrade his character of service to honorable and for a personal appearance before the Board, his supporting documents, his statement, the evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests and for liberal consideration of discharge upgrade requests.

2. After carefully considering the applicant's request and all the available evidence, argument, and references to include the various Department of Defense guidance for consideration of discharge upgrade requests and for liberal consideration of discharge upgrade requests, the Board determined relief was not warranted.

a. The evidence of record and independent evidence provided by the applicant 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.

b. The applicant states, in effect, his discharge was not justice because his first sergeant and captain, who were white, stated they were going to get him, and they did not like him. However, he did not provide any evidence or examples of in-service mitigating factors such as specific situations, experiences, or injustice he experienced that would mitigate his misconduct or that would warrant consideration for mitigation under liberal consideration.

c. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination.

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 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.

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. Paragraph 2-9 states 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.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

c. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

3. Army Regulation 635-200 sets 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 14, paragraph 14-33b(1) provides for the separation of Soldiers when they have patterns of misconduct for frequent incidents of discreditable nature with civil or military authorities. The issuance of a discharge UOTHC is normally considered appropriate for separations under the provisions of this chapter.

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.

//NOTHING FOLLOWS//