

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 9 February 2024

DOCKET NUMBER: AR20230007825

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)
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 16 December 1980
- Resume
- Certificates and Letters of Commendation (5 pages), dated 9 December 2005 to 17 April 2011
- Letter from National Personnel Records Center (NPRC), dated 26 August 2016

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 he admits he had quite a few Articles 15; however, he has had quite a few years to work on his morals, work ethic, and things that are more important in life. He has had a lot of time to think about his mistakes. He has learned to adapt and overcome most situations and circumstances.

3. The applicant enlisted in the Regular Army on 10 April 1979.

4. Four DA Forms 4187 (Personnel Action) show the following changes in the applicant's duty status:

- Present for Duty (PDY) to Absent without Leave (AWOL) on 6 August 1979
- AWOL to PDY on 8 August 1979
- PDY to AWOL on 11 October 1979

- AWOL to PDY, surrendered to military authorities, on 12 October 1979

5. A DA Form 3975 (Military Police Report), dated 14 November 1979, shows the applicant was apprehended on 16 October 1979 at the Main Exchange, for suspected shoplifting of a pair of sunglasses. Upon questioning, he stated he intended to buy the sunglasses. He placed them in his pocket so he could handle his money at the cashier's window while purchasing money orders. He offered to pay for the sunglasses when he was questioned at the exchange. He was processed and released to his unit.

6. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on three occasions:

a. On 12 March 1980, for failure to obey a lawful order to get a haircut from a superior noncommissioned officer (NCO), on or about 3 March 1980, and for failure to go at the time prescribed to his appointed place of duty, on or about 4 March 1980. His punishment consisted of reduction to private/E-1, forfeiture of \$104.00 pay, and 14 days of extra duty.

b. On 2 June 1980, for going from his appointed place of duty without authority, on or about 23 April 1980. His punishment consisted of forfeiture of \$104.00 pay and 14 days of extra duty.

c. On 1 August 1980, for failure to go at the time prescribed to his appointed place of duty, on or about 19 July 1980. His punishment consisted of forfeiture of \$116.00 pay, 11 days of extra duty, and 14 days of restriction.

7. Two DA Forms 4187 show the applicant's duty status changed from PDY to AWOL on 27 August 1980. He surrendered to military authorities and was returned to duty on 4 September 1980.

8. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 4 September 1980, for failure to go at the time prescribed to his appointed place of duty; disobeying a lawful command, and disobeying a lawful order from his superior NCO, on or about 20 August 1980; for being AWOL, on or about 22 August 1980; for three specifications of failure to repair, on or about 22 August 1980, 23 August 1980 and 24 August 1980; and for disobeying a lawful order from his superior NCO, on or about 24 August 1980. His punishment consisted of forfeiture of \$104.00 pay and 14 days of restriction.

9. On 5 December 1980, the applicant's immediate commander notified the applicant that he was initiating action to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-31, Expeditious Discharge Program (EDP), with an under honorable conditions (General)

discharge. As the specific reasons for the proposed action, his commander noted the applicant's poor attitude and lack of motivation.

10. On 8 December 1980, the applicant acknowledged receipt of the separation notification. He was advised of the rights available to him and the effect of waiving his rights. He voluntarily consented to the separation and elected not to submit a statement in his own behalf.

11. The applicant underwent a mental status evaluation. The examining provider determined he was psychiatrically cleared and able to participate in any administrative action deemed appropriate by the command.

12. Subsequently, the applicant's commander formally recommended the applicant's separation from service under the provisions of AR 635-200, paragraph 5-31, prior to his expiration of term of service.

13. The separation authority approved the recommended separation action on 9 December 1980 and further directed an under honorable conditions (General) characterization of service.

14. Accordingly, the applicant was discharged on 16 December 1980, under the provisions of AR 635-200, paragraph 5-31h (2), by reason of expeditious discharge program – failure to maintain acceptable standards for retention. His DD Form 214 shows his service was characterized as under honorable conditions (General), with separation code JGH and reentry code RE-3. He completed 1 year, 8 months, and 4 days of active service, with lost time from 6 August 1979 to 7 August 1979 and 11 October 1979 to 11 October 1979.

15. Regulatory guidance states individuals discharged under the EDP were issued either a general or honorable characterization of service.

16. The Army Discharge Review Board (ADRB) considered the applicant's request for a discharge upgrade on 23 March 1982. After careful consideration, the ADRB determined the applicant was properly discharge and denied his request for relief.

17. The applicant provides:

a. A copy of his professional resume, which shows his education and work experience from 1976 to present.

b. Five certificates and letters of commendation, dated 9 December 2005 to 17 April 2011, highlight his post-service accomplishments to include a commercial driver's training certificate, two letters, and two certificates from Schneider National which

commend him for his work ethic, performance, and contributions towards the success of the company.

c. A cover letter from NPRC, dated 26 August 2016, which shows NPRC's response to his request for copies of his service records.

18. 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:

Mbr 1      Mbr 2      Mbr 3

■	■	■	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 16 December 1980, showing a characterization of service as honorable.

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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, USC, 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) 635-200 (Personnel Separations – Enlisted Personnel), 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. 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 and 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//