

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 February 2024

DOCKET NUMBER: AR20230008413

APPLICANT REQUESTS:

- upgrade of his discharge to an honorable or general vice under other than honorable conditions
- restoration of his Montgomery GI Bill benefits
- a military identification card and medical benefits

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

DD Form 149 (Application for Correction of Military Record), 25 May 2023

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, in effect, he got in trouble while stationed in Camp Hovey, Korea when he was 18 years old, he is now 51 and would really like to put this behind him. He did not see the benefit in changing his character of service in the past, but now he does. It is been over 30 years, he is older and would like to receive medical and on base benefits. He is asking for mercy and understanding.
3. The Army Board for Correction of Military Records (ABCMR) only corrects information for the purpose of corrections or amendments to service members records. If the applicant wishes restoration of his GI Bill and medical benefits, he must contact the Department of Veterans Affairs for further assistance. Furthermore, military identification cards are issued to military family members, military retirees, and medically retired service members, to access service benefits and privileges the applicant should visit his local Defense Enrollment Eligibility Reporting System (DEERS) office to verify eligibility or for further assistance. These requests are not within ABCMR jurisdiction and will not be further discussed during the proceedings of this case.
4. The applicant's record is incomplete. His service record does not reflect any separation documents or disciplinary actions (e.g. counseling statements, nonjudicial punishments, charge sheets, his request for voluntary discharge, or the separation authority's decision). However, his service record reflects the following documents:

- a. DD Form 4 (Enlistment/Reenlistment Document) shows he enlisted in the Regular Army on 7 February 1990.
- b. His DA Form 2-1 (Personnel Qualification Record) shows he served in Korea from 19 June 1990 to on or about 2 July 1991. This form shows he held the rank of private/E-1.
- c. Transition Orders 177-06, issued by the 509th Personnel Service Company, Korea on 26 June 1991, show the applicant was reassigned to the US Army Transition point for transition processing. After processing, he would be relieved from active duty not by reason of physical disability on 3 July 1991.
- d. The applicant's DD Form 214 (Certificate of Discharge or Release from Active Duty) for the period ending 3 July 1991 to shows he was discharged on 3 July 1991 in accordance with chapter 10 (For the Good of the Service – In lieu of Trial by Court-Martial) of Army Regulation (AR) 635-200 (Personnel Separations) with an under other than honorable conditions characterization of service. He completed 1 year, 4 months, and 27 days of active service. He is assigned Separation Code KFS, Reentry Code 3.
- e. On 14 January 2000, the Army Discharge Review Board (ADRB) informed the applicant that after careful review of his application, military records and all other available evidence, the ADRB determined that you were properly and equitably discharged. Accordingly, his request for a change in the character and/or reason of his discharge is denied.

6. In reaching its determination, the Board can consider the applicant's 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 considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

- a. The applicant's separation packet is not available for review. However, his DD Form 214 indicates he was charged with commission of an offense punishable under the UCMJ with a punitive discharge. After being charged, he presumably consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in the available separation. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a

clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. The GI Bill is administered by the Department of Veterans Affairs. GI Bill benefits help service members pay for college, graduate school, and training programs. To activate GI Bill benefits, a service member must submit the appropriate forms via the VA eBenefits portal. Additionally, the issuance of a military ID and/or healthcare benefits is also not within the purview of this Board. Military ID cards are issued to eligible servicemembers, retirees, dependents, Reservists and Army National Guard members, and many others depending on their status.

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.

REFERENCES:

1. Title 10, United States 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 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. No member will be separated under this program unless the Army member voluntarily consents to the proposed separation. The Army member's acceptance of separation may not be withdrawn after the date the separation authority approves the separation.

d. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

4. Army Regulation 635-5 (Separation Documents). The DD Form 214 is a summary of a soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active duty service at the time of release from active duty, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a

Soldier's service. Item 28 (Narrative Reason for Separation) is based on regulatory or other authority guidance.

5. 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. 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. 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//