

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 March 2024

DOCKET NUMBER: AR20230008532

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Terra Technical college transcript and associate degree diploma, 14 June 1984
- Certificates of Achievement, 22 April 1986, and 5 August 1986
- Certificate of Appreciation, 21 December 1986
- Esco Institute Universal technician certification card, 28 December 1993
- Certificate of Ministry and Ministry License, 25 August 2020 and 13 September 2022
- Certificate of Faculty Membership Living Free Ministries, 20 December 2022

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

a. His addiction to amphetamines and alcohol and the resulting paranoia caused him to fear he would die of an overdose if he did not get help. He did not know where to find help or if help was available to him within the military. The only option he believed he had was to try to escape the problem. His actions, in retrospect, were a cry for help rather than any genuine desire to leave the military.

b. Since his separation from the Army, he has made continuing efforts to live his life in service to others, especially those who are dealing with life-controlling problems. He is currently a faculty member and field representative with Living Free Ministries, a faith-

based, small-group ministry for those who struggle with behaviors, emotions, attitudes, relationships, and substances.

3. The applicant enlisted in the Regular Army on 29 December 1969. He was honorably discharged on 22 August 1972 for immediate reenlistment on 23 August 1972, for 4 years. The highest rank/grade he held was specialist five//E-5.

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

a. On 11 June 1973, for twice failing to go at the time prescribed to his appointed place of duty on or about 5 June 1973.

b. On 26 February 1974, for absenting himself from his appointed place of duty and disobeying a lawful order from a superior commissioned officer on or about 7 February 1974. His punishment was reduction to specialist/E-4 and 30 days extra duty.

c. On 28 May 1974, for failing to go at the time prescribed to his appointed place of duty on or about 23 May 1974. His punishment was reduction to private first class/E-3, forfeiture of \$110.00 pay per month for one month (suspended 30 days), and 14 days extra duty.

5. The applicant received informal counseling on eight occasions between 7 February and 17 July 1974 for:

- failure to report, failure to obey a lawful order, poor attitude, and sub-standard duty performance
- poor attitude and sub-standard job performance, leadership, and supervisory abilities
- failure to report for extra duty and poor attitude and job performance
- failure to report for morning detail

6. On 21 June 1974 and 25 July 1974, the applicant underwent a complete medical examination and mental status evaluation as part of his consideration for discharge due to his misconduct. His mental status evaluation noted, he met the retention standards, was mentally responsible, was able to distinguish right from wrong and adhere to the right and had the mental capacity to understand and participate in board proceedings.

7. On 19 August 1974, the applicant's commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13 (Separation for

Unfitness or Unsuitability), paragraph 13-5b (3), for unsuitability/apathy, defective attitudes, and inability to expend effort constructively.

8. On the same date, his commander formerly recommended the applicant's separation from the service. In his recommendation the commander noted the applicant had been unreliable, had failed to perform adequately any mission given to him, and had repeatedly been disrespectful to commissioned and noncommissioned officers.

9. On 22 August 1974, the applicant acknowledged receipt of his commander's notification. He consulted with counsel and was advised of the reason for separation and the rights available to him. He understood if he was issued a general discharge, he may encounter substantial prejudice in civilian life. He did not submit a statement in his own behalf.

10. On 27 August 1974, his intermediate commander recommended the applicant's separation from service.

11. On 3 September 1974, the separation authority approved the recommended discharge and directed the issuance of a DD Form 257A (General Discharge Certificate), with separation program designator code "JMJ."

12. On 6 September 1974, the applicant again underwent a complete mental status evaluation as part of his consideration for discharge due to his misconduct. His mental status evaluation noted, he met the retention standards, was mentally responsible, was able to distinguish right from wrong and adhere to the right and had the mental capacity to understand and participate in board proceedings.

13. The applicant was discharged accordingly on 11 September 1974, under the provisions of Arm Regulation 635-200, paragraph 13-5b (3), by reason of unsuitability with an under honorable conditions (General) characterization of service. He received separation program designator code JMJ and reenlistment code RE-3 and 3C. His DD Form 214 contains the following entries:

a. He completed 2 years and 19 days of active service with 1 year, 6 months, and 15 days of foreign service during the period covered.

b. Block 26 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized), shows he was awarded the National Defense Service Medal and Army Good Conduct Medal.

14. The applicant provides miscellaneous documents detailing his post-service religious, educational, and professional accomplishments, including two certificates showing he completed an alcohol/drug outpatient and continuing care program. These

documents are provided in their entirety for the Board's review within the supporting documents.

15. There is no indication the applicant petitioned the Army Discharge Review Board for an upgrade of his discharge within that Board's 15-year Statute of limitations.

16. Regulatory guidance in effect at the time provided the service of Soldier's separated because of unsuitability under the provisions of AR 635-200, Chapter 13 would be characterized as honorable or under honorable conditions.

17. 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 and all supporting documents, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. The Board found sufficient evidence of in-service mitigating factors to overcome the misconduct. The applicant provided post-service character letters of support to weigh a clemency determination. Based on a preponderance of evidence, the Board determined that the characterization of service the applicant received upon separation warranted an upgrade to honorable.

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 showing his 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, 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), states applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
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. Paragraph 13-5(b), in effect at the time, provided for separation for unsuitability, which included inaptitude, character and behavior disorders, apathy (lack of appropriate interest), defective attitudes, and inability to expend effort constructively, alcoholism, and homosexuality (homosexual tendencies, desires, or interest but without overt homosexual acts). When separation for unsuitability was warranted, an honorable or general discharge was normally considered appropriate.
  - 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 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, 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//