

5. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on:

- 16 August 1983, for being derelict in the performance of his duties by failing to remain awake while on duty on or about 12 August 1983; his punishment consisted of extra duty, restriction, and forfeiture \$120.00 (suspended)
- 28 September 1984, for disobeying a lawful order on or about 17 September 1984 (twice); his punishment consisted of reduction to private/E-2 (suspended) and extra duty
- 12 October 1984, the punishment was vacated for without authority going from his appointed place of duty on or about 10 October 1984
- 2 January 1985, for without authority, failing to go at the time prescribed to his appointed place of duty on or about 11 December 1984 (twice) and on or about 13 December 1984 (twice); his punishment consisted of reduction to private/E-1, extra duty, and forfeiture of \$150.00 (suspended)

6. The applicant's immediate commander notified him on 11 January 1985 of his intent to recommend the applicant for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14, for patterns of misconduct. The specific reasons for this recommendation were the numerous acts of misconduct resulting in NJP and numerous occasions of absent from duty resulting in counseling. His commander recommended he receive a general discharge certificate.

7. The applicant consulted with legal counsel on 11 January 1985 and was advised of the basis for the proposed separation under the provisions of AR 635-200, Chapter 14 for misconduct, and the procedures and rights that were available to him.

a. He acknowledged that he may expect to encounter substantial prejudice in civilian life if discharged under honorable conditions (general).

b. He elected not to submit statements in his own behalf.

8. The applicant's immediate commander formally recommended the applicant be separated from active military service on 11 January 1985. The commander stated the applicant had established a pattern of misconduct and unsatisfactory duty performance and did not warrant future rehabilitative efforts.

9. The separation packet was sent for administrative correctness on 15 January 1985 and found to be administratively incorrect on 16 January 1985.

10. The separation authority approved the recommended discharge action, under the provisions of AR 635-200, Chapter 14, on 17 January 1985 and directed that the applicant be furnished a General Discharge Certificate.

11. The applicant was discharged accordingly on 25 January 1985. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 14-12b, for misconduct-pattern of misconduct, with Separation Code JKM and Reenlistment Code RE-3. His service was characterized as under honorable conditions (general). He completed 2 years, 2 months, and 10 days of net active service this period. He was awarded or authorized the Army Service Ribbon, Heavy Wheeled Vehicle Drivers Badge, and the Sharpshooter Marksmanship Qualification Badge (M-16).
12. The applicant provides a copy of his DD Form 214 and a DVA letter, dated 14 January 2022, that shows his service is considered honorable for DVA purposes and a combined service-connected disability rating of 90%.
13. On 13 September 1991, the Army Discharge Review Board determined the applicant was properly and equitably discharged and denied his request for a change in the character and/or reason of his discharge.
14. On 25 February 2011, the ABCMR notified the applicant that this agency was not the records custodian for military records.
15. On 22 January 2019, the ABCMR Board determined the evidence presented was sufficient to warrant partial relief. As a result, the Board recommended that the applicant's records be corrected by issuing a DD Form 215 that added to item 18 (Remarks) Service in Sinai 19840201-19840729. On 24 June 2019, the ABCMR informed the applicant that his records had been corrected.
16. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. 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 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. Upon review of the applicant's petition and available military record, the Board found insufficient evidence of in-service mitigating factors to overcome the misconduct and unsatisfactory duty performance. The Board noted, the applicant provided insufficient evidence of post-service achievements or character letters of support to attest to his honorable conduct that might have mitigated the discharge characterization.

2. The Board noted, the applicant was discharged for misconduct and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Therefore, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record 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.

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.

3/19/2024

CHAIRPERSON 

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 15-185 (ABCMR) 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, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. 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.

3. AR 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 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered

appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

4. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//