

IN THE CASE OF: ██████████

BOARD DATE: 14 March 2024

DOCKET NUMBER: AR20230008648

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) characterization of service and a personal 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 (Certificate of Release or Discharge from Active Duty), for the period ending 29 August 1983

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 he was told his characterization of service would be upgraded six months after he was discharged.
3. The applicant enlisted in the Regular Army on 12 January 1982, for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 13E (Cannon Fire Direction Specialist). The highest rank he attained was private first class/E-3.
4. The applicant was formally counseled on 24 September 1982 for paying a late bill to a finance company.
5. The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice on two occasions:
 - a. On 24 January 1983, for three instances of failure to go at the time prescribed to his appointed place of duty, on or about 17 January 1983. His punishment consisted of 14 days of extra duty and 14 days of restriction.

b. On 2 June 1983, for being absent from his unit without authority (AWOL), on or about 31 May 1983 until on or about 1 June 1983. His punishment consisted of reduction to private/E-2, forfeiture of \$150.00 pay, 14 days of extra duty, and 14 days of restriction. Upon appeal, his punishment was mitigated to forfeiture of \$75.00 per month for two months.

6. The applicant was formally counseled on 14 July 1983 for being incarcerated on 9 July 1983 for reckless driving and driving without a license. He also failed to report for guard mount on 10 July 1983.

7. The applicant accepted non-judicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice, on 14 July 1983, for failure to go at the time prescribed to his appointed place of duty, on or about 10 July 1983. His punishment consisted of reduction to private/E-1, forfeiture of \$133.00 pay, 14 days of extra duty, and 14 days of restriction. His appeal of his punishment was considered and denied on 27 July 1983.

8. The applicant's Immediate commander initiated a Bar to Reenlistment on 27 July 1983. As reasons for the action, the commander noted the applicant received two Article 15s within one month, he failed to notify the chain of command of his detention, he was arrested by civil authorities, and demonstrated his apathy by failing to follow proper procedures while on pass. The bar was approved on 28 July 1983, and the applicant was notified of the approved bar on 29 July 1983.

9. Before a summary court-martial, at Fort Polk, LA, on 5 August 1983, the applicant pled guilty to and was found guilty of three specifications of failure to go at the time prescribed to his appointed place of duty, on or about 31 July 1983, 1 August 1983, and 2 August 1983. He was sentenced to forfeiture of \$382.00 pay and confinement at hard labor for 30 days. The sentence was approved and ordered executed on 8 August 1983.

10. The applicant's commander notified him on 5 August 1983 of his intent to initiate administrative separation action under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13, by reason of unsatisfactory performance.

11. A DA Form 3822-R (Report of Mental Status Evaluation), dated 8 August 1983, shows the applicant was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

12. On that same date, the applicant acknowledged he was advised by consulting counsel of the basis for the contemplated action to separate him for unsatisfactory performance under Army Regulation 635-200, Chapter 13, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights. He

acknowledged understanding that he may expect to encounter substantial prejudice in civilian life if a under honorable conditions (general) discharge was issued to him. He further understood that, as the result of the issuance of a discharge under other than honorable conditions, he may be ineligible for many or all benefits as a Veteran under both Federal and State laws and that he may expect to encounter substantial prejudice in civilian life. He elected not to submit a statement in his own behalf.

13. On 10 August 1983, the applicant's immediate commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 13. The commander noted the applicant's two Articles 15 and conviction by summary court-martial as reasons for the recommended separation action.

14. On that same date, the separation authority approved the recommendation for discharge under the provisions of Army Regulation 635-200, Chapter 13, waived the rehabilitative transfer requirement, and directed the issuance of a DD Form 257A (General Discharge Certificate).

15. The applicant was discharged on 29 August 1983, under the provisions of Army Regulation 635-200, Chapter 13, by reason of unsatisfactory performance. His DD Form 214 confirms his service was characterized as under honorable conditions (general). He was credited with 1 year, 6 months, and 25 days of net active service, with lost time from 5 August 1983 to 28 August 1983.

16. Soldiers may be separated under the provision of Army Regulation 635-200, Chapter 13 when it is determined that they are unqualified for further military service because of unsatisfactory performance.

17. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, his bar to reenlistment, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency

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

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.

6/25/2024

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CHAIRPERSON
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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.

The regulation provides the ABCMR may, in its discretion, hold a hearing. 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. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 13 of this regulation provides for separation due to unsatisfactory performance when, in the commander's judgment, the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.

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.

//NOTHING FOLLOWS//