

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 February 2024

DOCKET NUMBER: AR20230008664

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) character of service and a personal appearance before the Board.

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

DD Form 293 (Application for the Review of Discharge)

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 is requesting this change because he needs benefits and help.
3. The applicant enlisted in the Regular Army on 21 September 1982. Upon completion of training, he was awarded military occupational specialty 13B (Cannon Crewman). He attained the rank/grade of Private First Class (PFC)/E-3 on 21 May 1983.
4. On 3 May 1984, before a civilian court at the U.S. District Court of Nuernberg-Fuerth, Germany, the applicant was found guilty of raping a German National on 29 July 1983. The court sentenced him to four years adult confinement, unsuspended.
5. On 18 May 1984, the applicant's immediate commander notified him that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 14, for misconduct. The commander cited the specific reasons as the applicant's civil conviction for rape and sentence of four years in confinement.
6. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 14, prior to his expiration term of service.

7. On 13 June 1984, the applicant acknowledged he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him.

a. He declined to submit a statement in his own behalf.

b. He acknowledged he understood that as a result of issuance of a discharge UOTHC, he may be ineligible for many or all benefits as a Veteran under Federal and State laws and that he could expect to encounter substantial prejudice in civilian life.

8. On 11 July 1984, a legal review found the applicant's Chapter 14 separation action to be legally sufficient for further processing.

9. The separation authority approved the recommended discharge on 27 July 1984, directed the issuance of a DD Form 794A (UOTHC Discharge Certificate), and the applicant's reduction to the lowest enlisted grade.

10. On 12 February 1986, the applicant voluntarily declined a separation medical examination.

11. The applicant was discharged on 12 February 1986. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c, for misconduct - commission of a serious offense. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Code JKQ and Reentry Codes 3, 3B, and 3C. He completed 2 years, 1 month, and 13 days of net active service this period with 646 days of lost time.

12. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

1. 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 to include any deployments, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency.

2. 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.

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.

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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.

a. Paragraph 2-9 states 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.

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. 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. 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 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed. Paragraph 14-12c (Commission of a Serious Offense) applied to commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense. First time offenders below the grade of sergeant, and with less than 3 years of total military service, may be processed for separation as appropriate.

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//