

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2024

DOCKET NUMBER: AR20230008818

APPLICANT REQUESTS: upgrade of his general, under honorable conditions discharge to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD: DD Form 149 (Application for Correction of Military Record), 31 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:

a. He feels he was unjustly forced out. His lack of knowledge as a young man and lack of representation were the reasons he signed the discharge papers. He was coerced into signing the papers.

b. There were many false claims made against him. As the youngest and only African American Soldier in his squad, racism was present in the attitudes of his noncommissioned and commanding officers. There were no wars during his enlistment so it was easy to say he was not needed.

c. He was the petroleum clerk but others did the paperwork for which he took the blame. He was given nonjudicial punishment frivolously and in one case for not reporting for duty when he was given the day off for his birthday.

d. He has no proof of the allegations but asks to be given the benefit of the doubt.

3. A review of the applicant's service records shows:

a. On 17 March 1981, he enlisted in the Regular Army for a term of 3 years at age 18.

b. On 28 July 1981, he accepted company grade nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for failing to obey a lawful order for sleeping in class at Fort Lee, on 28 June 1981. His punishment consisted of forfeiture of 100.00 for 1 month and extra duty and restriction for 14 days. He did not appeal his punishment.

c. On 18 September 1981, he accepted company grade NJP under the provisions of Article 15, UCMJ, for failing to go to his appointed place of duty as a security guard at Fort Lee on 13 September 1981; for sleeping at his post while posted as a security guard on 13 September 1981; and for assaulting another Soldier by striking him in his face on 13 September 1981. His punishment consisted of forfeiture of \$150.00 per month for 2 months, suspended for 1 month; and confinement for 15 days, suspended for 30 days. He did not appeal this punishment.

d. On 26 October 1981, he was assigned to Headquarters and Headquarters Troop, 2nd Squadron, 6th Cavalry, Fort Knox.

e. He was counseled on 4 December 1981 for disobedience of a lawful order to go outside and monitor the fuel pumps and for disrespect to a noncommissioned officer.

f. His records contain an initial report of investigation ( [REDACTED] ), dated 7 February 1982, conducted by Ft Knox Criminal Investigation Division, and shows he was titled as a subject and witness of a barracks incident involving two female minors who were present in his and another Soldier's room. The final report is not contained in the available records.

g. A memorandum for record, dated 10 February 1982, shows he was counseled by his commanding officer for having two underage girls in the billets after hours on 7 February 1982.

h. A written notation made by his commanding officer, dated 10 March 1982, shows he was derelict in the performance of his duties on 9 March 1982 by losing accountability of 10.2 gallons of MOGAS; for losing accountability of 30.4 gallons of diesel fuel; and for trying to cover up the loss of 10.2 gallons of MOGAS by falsifying the morning POL report on 10 March 1982.

i. On 25 March 1982, he accepted company grade NJP under the provisions of Article 15, UCMJ, for dereliction in performance of his duties by negligently failing to keep accountability of 10.2 gallons of MOGAS on 9 March 1982; for negligently failing to keep accountability of 30.4 gallons of diesel fuel on 10 March 1982; and for having

visitors in the billets on 7 February 1982 after visiting hours without signing them in at the CQ desk. His punishment consisted of reduction to private/E-1, suspended for 30 days; and restriction to the troop area for 60 days, suspended for 30 days. He did not appeal this punishment.

j. A letter of reprimand dated 13 May 1982 shows he was relieved from his duties as the POL man at 2nd Squadron, 6th Cavalry for erroneous stick reading of the MOGAS tank on 4 May 1982; and for negligent readings of POL being taken.

k. He was counseled:

- on 14 May 1982 for not following the chain of command in request for leave by going through his commanding officer on 13 May 1982
- on 14 May 1982 for being absent from his place of duty at the POL point on 14 May 1982

l. On 25 May 1982, he accepted field grade NJP under the provisions of Article 15, UCMJ, for failing to go to his appointed place of duty at 2nd Squadron, 6th Cavalry, on 14 May 1982. His punishment consisted of reduction to private/E-1, forfeiture of \$128.00 for 1 month, restriction and extra duty for 14 days. On 25 May 1982, he appealed this punishment. On 1 June his commanding officer denied his appeal and noted he was drunk in quarters and could not respond to work call.

m. On 14 June 1982, his immediate commander notified him of his intent to initiate separation action against him under the provisions of Army Regulation 635-200, paragraph 5-31, Expeditious Discharge Program (EDP) and for transfer to the Individual Ready Reserve to complete his military service obligation, if any, or to discharge him from the Army with a service characterization of general, under honorable conditions. The reasons for his proposed action were that he was duty performance was substandard and his attitude very unprofessional. He was counseled about his duty performance by his chain of command and he received multiple NJP punishments.

n. On the same date, he acknowledged receipt of his commander's notification of his proposed discharge from the U.S. Army under the provisions of Army Regulation 635-200, paragraph 5-31. He consulted with counsel and was advised of the basis of the contemplated separation and voluntarily consented to this discharge. He elected not to submit statements in his own behalf. He understood that he may expect to encounter substantial prejudice in civilian life if a discharge general, under honorable conditions was issued to him. He further understood that as the result of issuance of a discharge general, under 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.

o. On an unspecified date, his immediate commander-initiated separation action against him under the EDP and recommended he be issued a General Discharge Certificate.

p. On 1 July 1982, he accepted field grade NJP under the provisions of Article 15, UCMJ, for possession of 5 1/2 grams of marihuana on 18 June 1982; for failing to go to his appointed place of duty on 25 June 1982. His punishment consisted of forfeiture of \$275.00 pay for 2 months; extra duty for 30 days and restriction for 30 days. On 1 July 1982, he appealed this punishment. On 9 July 1982, the commanding officer denied his appeal.

q. On 20 July 1982, the separation authority (Commanding Officer, Headquarters, 6th Cavalry, School Brigade), approved and ordered the applicant's discharge under provisions of Army Regulation 635-200, paragraph 5-31, and directed issuance of a General Discharge Certificate. He directed the applicant not be assigned to the Individual Ready Reserve.

r. On 23 July 1982, he was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was released under the provisions of paragraph 5-31h(2), Army Regulation 635-200, by reason of EDP, for failure to maintain acceptable standards for retention, with a general, under honorable conditions characterization of service. His separation code was JGH and his reenlistment code 3. He completed 1 year, 4 months, and 7 days of active service. He was awarded or authorized the Army Service Ribbon and the Marksman Marksmanship Qualification Badge with Rifle Bar (M-16).

4. There is no evidence of record showing he applied to the Army Discharge Review Board for an upgrade of his discharge within the 15-year statute.

5. 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:

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 records, the Board found insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board noted, the applicant provided insufficient evidence of post-service honorable conduct that might have mitigated the discharge characterization. The Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 1 year, 4 months, and 7 days of active service.

2. The Board noted, the applicant was discharged for failure to maintain acceptable standards for retention, 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.

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.

3/1/2024

X

[Redacted Signature]

CHAIRPERSON

[Redacted Name]

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

c. Paragraph 5-31 provides for separating enlisted members under the expeditious discharge program (EDP). This program provides that members who have demonstrated that they cannot or will not meet acceptable standards required of enlisted personnel in the Army because of existence of one or more of the following conditions may be separated when they have failed to respond to counseling (DA Form 4856, General Counseling Form). The criteria in section VIII, chapter 1, will govern whether the member will be released from active duty with transfer to the IRR, or be discharged. A discharge general, under honorable conditions is normally appropriate for a Soldier discharged under this chapter.

- Poor attitude
- Lack of motivation
- Lack of self-discipline
- Inability to adapt socially or emotionally
- Failure to demonstrate promotion potential

d. 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.

4. Army Regulation 635-5 (Separation Documents), in effect at the time, prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active duty. The DD Form 214 is of vital importance to the separating Soldier and must be properly prepared according to prescribed guidance; ensure all information on the DD Form 214 and other separation documents is accurate.

a. The instructions for item 24 (Character of Service), enter the character of service; authorized entries include honorable, under honorable conditions (general), under other than honorable conditions, bad conduct, dishonorable, to be determined, or not applicable.

b. The instructions for item 25 (Separation Authority), enter the statutory authority cited in directives authorizing separation on copies 2, 4, 7, and 8 only.

c. The instructions for item 26 (Separation Code), enter the proper SPD representing the reason for separation on copies 2, 4, 7, and 8 only.

d. The instructions for item 27 (Reenlistment Code), for RE codes see Army Regulation 601-280 for RE codes to be entered on copies 2, 4, 7, and 8 only.

e. The instructions for item 28 (Narrative Reason for Separation), enter the reason for separation based on the regulatory or statutory authority from Army Regulation 635-5-1.

5. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Chapter 3 prescribes basic eligibility for prior-service applicants for enlistment and includes a list of Armed Forces reentry eligibility (RE) codes.

- RE-1 applies to persons completing an initial term of active service who are considered qualified to reenter the U.S. Army if all other criteria are met
- RE-3 applies persons who are not considered fully qualified for reentry or continuous service at the time of separation, but disqualification is waivable
- RE-4 applies to persons separated from their last period of service with a nonwaivable disqualification

6. Army Regulation 635-5-1 (Separation Program Designators) (1 October 1979) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation code to be entered on the DD Form 214. It identifies the separation code "JGH" as the appropriate code to assign to enlisted personnel administratively discharged under the provisions of Army Regulation 635-200, paragraph 5-31, based on the Expeditious Discharge Program for failure to maintain acceptable standards for retention.

//NOTHING FOLLOWS//