

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 February 2024

DOCKET NUMBER: AR20230008983

APPLICANT REQUESTS: upgrade of his under honorable conditions (general) characterization of service.

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

DD Form 149 (Application for Correction of Military Record), 20 May 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, he was told that upon separation after one year his discharge would be changed to honorable.
3. The applicant enlisted in the Regular Army on 26 October 1976, for a 3-year period. The highest rank he attained was private/E-2.
4. The applicant accepted non-judicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on three occasions:
 - a. On 22 June 1977, for failure to go to his appointed place of duty on or about 14 June 1977. His punishment consisted of forfeiture of \$97.00 pay per month for one month and 10 days extra duty.
 - b. On the same date, for two specifications of failure to go to his appointed place of duty on or about 15 June 1977, and willfully disobeying a lawful order on 15 June 1977. His punishment consisted of reduction to private/E-1, forfeiture of \$87.00 pay per one month, and extra duty for 14 days.

c. On 1 July 1977, for disobeying a lawful order and failure to go his appointed place of duty on or about 20 June 1977. His punishment consisted of forfeiture of \$180.00 pay per month for 2 months, 21 days of restriction, and 30 days of extra duty.

5. The applicant's immediate commander notified the applicant on 27 July 1977 that he was initiating action to discharge the applicant under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), paragraph 5-37, Expeditious Discharge Program (EDP), with the issuance of a general discharge certificate. The commander cited the reasons as the applicant's multiple punishments under Article 15, inability to adjust to the Army environment, failure to follow verbal directives and lackadaisical attitude.

6. The applicant acknowledged receipt of the notification. He consulted with counsel and was advised of the reason for separation and the rights available to him. He voluntarily consented to the discharge. 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 behalf.

7. The applicant's commander formally recommended his separation from service under the EDP. He noted the applicant was unfit for military service and lacked the efficiency in his job performance.

8. The separation authority approved the recommended discharge, under the provisions of Army Regulation 635-200, paragraph 5-37, EDP, on 27 July 1977, and further directed the issuance of a DD Form 257A (General Discharge Certificate).

9. The applicant was discharged accordingly on 4 August 1977, under the provisions of Army Regulation 635-200, paragraph 5-37. His DD Form 214 (Report of Separation from Active Duty) shows his characterization of service was under honorable conditions (general) with separation code JGH and reenlistment code RE-3. He was credited with 1 year, 1 month, and 9 days of net active service.

10. The EDP provides for discharge for members who have demonstrated they cannot or will not meet acceptable standards required of enlisted personnel in the Army when they have failed to respond to counseling.

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

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to a pattern of misconduct leading to the applicant's separation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

5/15/2024

X 

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 635-200 sets forth the basic authority for the separation of enlisted personnel.

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 5-37 of the regulation in effect at the time provided for the discharge of enlisted personnel whose performance of duty, acceptability for service, and potential for continued effective service fall below the standards required for enlisted personnel. The philosophy for this policy is that commanders will be able to anticipate and preclude the development of conditions which clearly indicate that Soldiers concerned are becoming problems to an extent likely to lead to board or punitive action which could result in their separation under conditions which would stigmatize them in the future. No individual would be discharged under this program unless the individual voluntarily consented to the proposed discharge. Individuals discharged under this provision of the regulation were issued either a general or honorable discharge.

d. The Expeditious Discharge Program provides that members who have demonstrated they cannot or will not meet the acceptable standards required of enlisted personnel in the Army because of the existence of one or more of the following conditions may be separated when they fail to respond to counseling.

- poor attitude
- lack of motivation
- lack of self-discipline
- inability to adapt socially or emotionally
- failure to demonstrate promotion potential

3. 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 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, 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//