

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 April 2024

DOCKET NUMBER: AR20230009568

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

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD: DD Form 293 in lieu of DD Form 149 (Application for Correction of Military Record), 27 June 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, he was 17 years old and had a drinking problem. He did not realize what he was doing was wrong at the time and that he needed help with his drinking issues.
3. A review of the applicant's service records shows:
  - a. On 26 June 1980, he enlisted in the Regular Army at age 17. He completed Basic Combat Training, he completed Advanced Individual Training, and he was awarded military occupational specialty 44B (Welder).
  - b. On 26 December 1980, he was promoted to private 2/E-2.
  - c. On 2 January 1981, he was assigned to 245th Engineer Detachment (Utilities), Fort Leavenworth, in the duty position of welder.
  - d. On 8 May 1981, he accepted company grade nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for disobedience of a lawful orders from the Charge of Quarters, 245th Engineer Detachment on 5 May 1981, to clean up popcorn he spilled on the floor; and for wrongfully using provoking words, "Go to h---, I don't want to f--- up your face," or words

to that effect. His punishment consisted of forfeiture of \$50.00 for one month and 5 days extra duty. On 8 May 1981, he appealed this NJP to his battalion commander and on 11 May 1981, his battalion commander denied his appeal.

e. He was counseled on several occasions:

- 15 May 1981, by his senior non-commissioned officer for being relieved from his duty position at the metal shop for lack of dependency, lack of discipline, undesirability for working around machinery, and personal problems making him unsuitable for his duty role
- 2 June 1981, for absence from morning formation and failure to report to police call
- 8 June 1981, for prohibition from driving his motorcycle, for not showing a driver's license, state registration, proof of insurance, and post registration
- 17 June 1981, for his attitude, disrespect towards his squad leader, and for disobedience of lawful orders

f. On 16 July 1981, he accepted company grade NJP under the provisions of Article 15 of the UCMJ for having received a lawful order from his superior noncommissioned officer on 10 July 1981 to paint in the basement of Building 46, did willfully disobey the same; and for disrespectful deportment to his superior noncommissioned officer by walking away while he was speaking to him. His punishment consisted of reduction from Private 2/E-2 to private/E-1, forfeiture of \$50.00 for one month. He did not appeal this punishment.

g. On 1 November 1981, he was promoted to private 2/E-2 and on 1 March 1982, he was promoted to private first class/E-3.

h. His records contain correspondence from a telephone company, dated 13 October 1982, showing unauthorized telephone calls to a third party account, request for restitution, and failure to pay just debt of \$97.05 as the result of telephone calls.

i. He was counseled on several other occasions:

- 21 October 1982, for insubordination and noise in barracks
- 3 November 1982, for disrespect, performance, and insubordination towards his platoon sergeant
- 3 November 1982 for unauthorized phone use and unpaid debt from unauthorized phone charges in the amount of \$97.05 to a third party number account
- 30 November 1982, for breaking and entering into an office at Building 46

j. His records contain a copy of an investigative report recorded on a CID Form 36 (Field Test Analysis on Non-Narcotic Substances), dated 16 February 1983, showing a positive test result on a greenish-brown vegetable substance. On the same date a statement was provided to his commanders showing a health and welfare check of his room conducted by military police determined a substance was found by an alerted K-9 search.

k. He was counseled on 24 February 1983 for missing 0715 morning formation.

l. On 24 February 1983, he accepted company grade NJP under the provisions of Article 15 of the UCMJ for wrongfully having marijuana in his possession at Fort Leavenworth on 16 February 1983. His punishment consisted of reduction to private 2/E-2, suspended until 23 August 1983; and 14 days of restriction. He did not appeal this punishment.

m. On 21 March 1983, he received supplementary NJP under provisions of Article 15 of the UCMJ during which the suspended portion of NJP punishment given to him on 24 February 1983 consisting of reduction to private 2/E-2 was remitted. This was based on failing to display proper military courtesy (did not stand retreat) as the U.S. flag was lowered.

n. On 21 March 1983, he received a Bar to Reenlistment Certificate (DA Form 4126-R) from his company commanding officer which noted he received four instances of nonjudicial punishment and was flagged from promotion due to poor work performance.

o. He was counseled on two occasions on 28 April 1983 for disrespect to his squad leader and disobedience of a lawful order given to him by his superior noncommissioned officer.

p. On 2 May 1983, he was counseled for failing to comply with his squad leader's orders to procure a pair of serviceable boots by the beginning of workday on 2 May 1983.

q. On 11 May 1983, he accepted company grade NJP under the provisions of Article 15 of the UCMJ for wrongfully possessing and distributing 4.73 grams of marijuana at Fort Leavenworth on 28 March 1983. His punishment consisted of reduction to private/E-1, and forfeiture of 7 days of pay (\$150.00). He did not appeal this punishment.

r. On 11 May 1983, he gave a report of medical history and reported no major medical issues other than his vision.

s. On 12 May 1983, he underwent a mental status evaluation (DA Form 3822-R) by the Chief Psychiatrist, as requested by his command for the purpose of administrative discharge. The Chief Psychiatrist found he met the physical retention standards prescribed in Army Regulation 40-501 (Standards of Medical Fitness). The Chief Psychiatrist further determined that he was mentally responsible, able to distinguish right from wrong, able to adhere to the right, and had the mental capacity to understand and participate in proceedings. He was cleared for administrative action deemed appropriate by his commander.

t. On 13 May 1983, the Company Commander, 245th Engineer Detachment (Utilities), notified him he was initiating action to separate him under the provisions of Army Regulation 635-200, chapter 14-12a (should show chapter 14-12b) for acts or patterns of misconduct, and notified him of his rights. He understood that his company commander was recommending that he not be transferred to the Individual Ready Reserve and the least favorable characterization of service he could receive was under other than honorable conditions. The specific reasons for his proposed action were: his lack of self-discipline; failure to respond in a positive manner to counseling; failure to pay just debts; unauthorized telephone calls; failure to repair to several unit formations; numerous incidents concerning disrespect toward NCOs, squad leaders, and CQs; numerous disciplinary actions concerning disobeying a lawful order (two occasions); use, possession, and distribution of marijuana; and dereliction of duty for failing to stand retreat (one occasion). He understood he had a right to:

- consult with consulting counsel and/or civilian counsel at no expense to the Government within a reasonable time (7 duty days)
- submit a statement or statements in his own behalf or waive his rights in writing

u. On 13 May 1983, his company commander recommended he be discharged from the Army under the provisions of Section III, Chapter 14, Army Regulation 635-200, for acts or patterns of misconduct. In this recommendation, his company commander noted the reasons for his recommendation, the numerous counseling sessions he received (18), numerous NJPs (5), and the rehabilitation efforts undertaken including two transfers to different training environments, all without positive response from the Soldier.

v. On 16 May 1983, after consulting with counsel he was advised of the basis of the contemplated separation against him, its effect, his rights, and the effect of any action taken by him in waiving his rights. 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 under honorable conditions (general) or a discharge under other than honorable conditions was issued to him.

w. On 17 May 1983, the separation authority, Commanding Officer, Headquarters Command, Command Arms Center and Fort Leavenworth, approved his discharge for patterns of misconduct, directed he received DD Form 257A (General Discharge Certificate), and directed he not be transferred to the Inactive Ready Reserve.

x. On 18 May 1983, he was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of paragraph 14-12b, of Army Regulation 635-200 by reason of misconduct-pattern of misconduct, with service characterized as general under honorable conditions. He completed 2 years, 10 months, and 18 days of net active service this period with no time lost. His grade/pay grade was shown as private/E-1.

4. 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:

The Board carefully considered the applicant's request, 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, 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.

8/18/2024

X [REDACTED]

---

CHAIRPERSON  
[REDACTED]

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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. 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.
  
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) 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. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

c. Paragraph 14-12b. A pattern of misconduct. A pattern of misconduct consists of discreditable involvement with civil or military authorities and conduct prejudicial to good order and discipline. Discreditable conduct and conduct prejudicial to good order and discipline includes conduct violative of the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

4. Army Regulation 635-5-1 (Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator JKM corresponded to the narrative reason "Misconduct-Pattern of Misconduct," and the authority, Army Regulation 635-200, chapter 14-12b.

5. 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/NRs) 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 based on 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//