

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 April 2024

DOCKET NUMBER: AR20230009637

APPLICANT REQUESTS, in effect,

- an upgrade to his characterization of service to reflect under honorable conditions (General)
- a video/telephonic appearance before the Board

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

DD Form 149 (Application for Correction of Military Record)

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:
 - while he was working six days a week (Wednesday through Monday), he had a manager that always complained about having to work around the applicant's schedule, thus putting pressure on his co-workers to cover for him; this created a hostile work environment
 - the manager also coerced the applicant into discontinuing his meetings
 - a few years later he discovered that his manager was a Vietnam veteran named R** E***
 - the applicant never understood why the manager would never support him
 - he did not apply within three years from discharge, but as time went on this was on his mind
3. The applicant's record is incomplete. However, the applicant's service record does reflect the following:
 - a. DD Form 4 (Enlistment/Reenlistment Document-Armed Forces of The United States) shows he enlisted in the U.S. Army Reserve on 20 February 1980 for six years.

b. Initial Active Duty for Training (IADT) Orders Number 37-29, dated 20 February 1980 show:

- he was to report to Fort Sill, OK on 17 March 1980
- his Basic Training beginning date was 21 March 1980
- his Advanced Individual Training (AIT) beginning date was 9 May 1980
- his Military Occupational Specialty (MOS) was 31V (Tactical Communications Systems Operator Mechanic)

c. He entered active duty for training (ADT) on 17 March 1980. He completed training for award of MOS 31V.

d. He was honorably released from ADT to his Reserve component on 18 July 1980. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was separated in accordance with paragraph 5-15, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) for completion of his MOS training.

e. Upon his return to his Reserve unit, he was assigned to 15th Psychological Operations Company in Upland, CA.

f. On 23 December 1981, the applicant's commander notified him that based on the number of his unexcused absences, or unsatisfactory performance, he could be recommended by a board of officers for transfer to the Individual Ready Reserve or discharged with a character of service "under other than honorable conditions". In addition, it was noted that he was absent from 12 to 13 December 1981, this was his sixth unexcused absence within a one-year period, from the Unit's scheduled Unit Training Assembly (UTA) or Multiple Unit Training Assembly (MUTA).

g. On 29 April 1982, the applicant's commander again notified him that based on the number of his unexcused absences, or unsatisfactory performance, he could be recommended by a board of officers for transfer to the Individual Ready Reserve or discharged with a character of service "under other than honorable conditions". In addition, it was noted that he was absent from 24 to 25 April 1982, this was his 14th unexcused absence within a one-year period, from the UTA or MUTA. Furthermore, due to his consistent pattern of absences and/or incompetent work habits, the commander decided to remove him from the unit. He was given 60 days, from the date of the notice to relocate to another unit.

h. On 27 May 1982 his commander initiated action to separate him from the Army Reserve under the provisions of section AR 135-178 (Army National Guard and Army Reserve Separation of Enlisted Personnel) VII, chapter 4, Expeditious Discharge Program (EDP).

i. On 3 October 1982 he was reduced in rank to SP4/E4 (specialist) to PFC/E3 (private first class) and was subsequently reassigned to the U.S. Army Reserve (USAR) Control Group (Annual Training) with a characterization of service of under other than honorable conditions.

j. Orders Number D-02-905108, dated 23 February 1987 show he was discharged accordingly from the USAR, under the provisions of AR 135-178 with an Under Other Than Honorable Conditions discharge.

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was discharged under the Expeditious Discharge Program after being counseled by the unit commander for excessive unexcused absences. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned by the Army National Guard during separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. 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.

[REDACTED]

[REDACTED]

[REDACTED]

[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) states ABCMR members will review all applications that are properly before them to determine the existence of an error. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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. AR 135-178 prescribes the policies, criteria, and procedures which apply to separation of enlisted members of the Army National Guard of the United States (ARN-GUS) and the United States Army Reserve (USAR).

a. Section VII, Chapter 4, Expeditious Discharge Program (EDP) provides that members who have demonstrated that they cannot or will not meet acceptable standards required of enlisted personnel in the Army National Guard (ARNG) or Army Reserve (USAR) may be separated after a member has accumulated more than 8 unexcused absences within one year (12 consecutive months).

b. Policy. To preclude the loss of potential mobilization assets, all members who are separated under this regulation for the following reasons prior to completion of their statutory military service obligation will be screened to insure that only those with no potential to meet mobilization requirements are discharged. All others will be retained as members of the IRR in accordance with the criteria set forth in the referenced provisions of this regulation to complete their statutory military service obligation. These criteria are based upon the probability that, under conditions of full mobilization, such members would be retained in the Service:

- Expeditious Discharge Program
- Dependency
- Hardship
- Inability to perform prescribed duties due
- to parenthood
- Pregnancy
- Secretarial authority
- Sole surviving sons/daughters and surviving

- family members
- Unsuitability-apathy

c. Character of service. The service of members who are transferred to the IRR under the programs cited above will be characterized as honorable or under honorable conditions. This will be based on the member's behavior and performance of duty in the unit, in the same manner as set forth in in this regulation and for type of discharge. The service of members transferred to the IRR under the programs cited above normally will be tentatively characterized as under other than honorable conditions. Reassignment orders transferring the member to the appropriate control group of the IRR will show the specific reason for transfer. Character of service will be entered under Additional Instructions on the orders.

4. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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//