

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 April 2024

DOCKET NUMBER: AR20230009754

APPLICANT REQUESTS: in effect, an upgrade of his under other than honorable conditions characterization of service.

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

DD Form 149 (Application for Correction of Military Record), 20 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, he believes he has become a great asset to society because he earned a degree in maintenance and carpentry from college. He is very helpful to anyone in need and he is a good citizen. Given the chance, he would still die for his country.
3. On 7 June 1979, at age 18, he enlisted in the Regular Army for a period of 3 years. He completed Basic Combat Training, Advanced Individual Training, and was awarded military occupational specialty 19F (Tank Driver).
4. On 24 October 1979, he was promoted to private 2/E-2.
5. On 4 January 1980, he was assigned to B Company, 1st Battalion, 63rd Armor, Fort Riley.
6. A DA Form 4187 (Personnel Action) shows he was absent without leave (AWOL) from 26 December 1979 to 4 January 1980.
7. Summary Court Martial Order (SCMO) Number 6, issued by Headquarters, 1st Battalion, 63d Armor, dated 16 April 1980, shows he was found guilty of being

AWOL from B Company, 1st Battalion, 63rd Armor from on or about 0630 hours, 8 April 1980 to on or about 1500 hours, 8 April 1980; and of being drunk and disorderly in Building 7243 while in military uniform on 3 April 1980. He pled and was found guilty. He was sentenced to forfeiture of \$224.00 for one month, confinement at hard labor for 15 days, and reduction to private/E-1. The sentenced was adjudged on 16 April 1980. (Note: These orders refer to his rank/grade as private first class(PFC)/E-3, but there is no other evidence, such as a promotion order or an entry on his DA Form 2-1 (Personnel Qualification Record - Part II) to verify this information.)

8. On 13 May 1980, he accepted company nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for failing to go to his appointed place of duty, to wit: Fireguard Mount, at the time prescribed, on 10 May 1980 at 3rd Unit, 2d Battalion, U.S. Army Retraining Brigade (USARB), Fort Riley; and for being incapacitated by indulgence in intoxicating liquor, incapacitated for the proper performance of his duties, at 3rd Unit, 2d Battalion, USARB, Fort Riley on or about 0300 hours, 10 May 1980. He was found guilty. His punishment consisted of forfeiture of \$50.00 for 1 month (suspended for 60 days) and 14 days of restriction and extra duty. He did not appeal this punishment.

9. On 23 May 1980, he accepted company NJP under the provisions of Article 15, UCMJ, for having been duly restricted to the limits of 3rd Unit, 2d Battalion, USARB, Fort Riley, on or about 1955 hours on 21 May 1980, and broke restriction. His punishment consisted of forfeiture of \$100.00 for 1 month and 14 days of restriction and extra duty. He did not appeal this punishment.

10. The separation package leading to a discharge from the Army, including his unit commander's notification and rights memorandum, his election of rights memorandum, his intermediate commanders' recommendation, and the separation approval authority memorandum, are not contained in the available records.

11. Orders 117-1, issued by USARB, Fort Riley on 16 June 1980, discharged him from the Regular Army with an effective date of 17 June 1980.

12. On 17 June 1980 he was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations - Personnel Separations), paragraph 14-33b(1), by reason of frequent involvement in incidents of a discreditable nature with civil or military authorities, with a characterization of service of under other than honorable conditions, a separation code of JKA and a reenlistment code of RE-3B. He completed 11 months and 29 days of net active service this period with 12 days' time lost from 16 April 1980 to 27 April 1980. It further shows he was awarded or authorized Marksman Marksmanship Qualification Badge with Rifle and Pistol Bars.

13. 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. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.
2. Other than his graduation from an institution of higher learning and his stated good citizenship, the applicant did not offer matters of mitigation, or specific examples of his good citizenry for the Board to weigh against his misconduct in consideration of clemency.

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 (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, which is the principle that government officials properly discharged their official duties unless there is evidence showing otherwise. 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), in effect at the time, provided the authority and general provisions governing the separation of enlisted personnel prior to the end of their ETS to meet the needs of the service and its members. It provided the criteria governing issuance of honorable, general, and under other than honorable discharge certificates.

a. Chapter 1-13(a) provided an honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude.

b. Chapter 1-13(b) provided a general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. The recipient of a general discharge is normally a member whose military record and performance is satisfactory. The member may have had frequent nonjudicial punishments but not for serious infractions. He may be a troublemaker, but his conduct is not so bad as to require discharge for cause or a discharge under less than honorable conditions.

c. Chapter 1-13(c) provided a discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, for security reasons, or for the good of the service.

d. Chapter 14 Separation for Misconduct. This chapter establishes policy and prescribes procedures for the elimination of enlisted personnel for misconduct by reason of fraudulent enlistment/reenlistment, conviction by civil court (members who have been initially convicted or adjudged juvenile offenders), desertion and absence without leave, and other acts or patterns of misconduct.

e. Chapter 14-33(b)(1). Patterns of Misconduct. Members are subject to separation under the provisions of this section for patterns of misconduct: frequent incidents of discreditable nature with civil or military authorities.

4. Army Regulation 635-5-1 (Separation Program Designators) (1 October 1979) provided 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 identified the separation code "JKA" as the appropriate code to assign to enlisted personnel administratively discharged under the provisions of Army Regulation 635-200, paragraph 14-33b(1), based on Misconduct - frequent incidents of a discreditable nature with civil or military authorities.

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 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//