

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 November 2024

DOCKET NUMBER: AR20230009789

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to an honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal statement
- Event program

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, via personal statement:

a. While stationed in Korea on liberty, the three Soldiers with him stole a vender's cash box. Even though he did not take the box, nor partake of the \$20 or \$30 that was in it, he knew this was wrong and should have done better. He was found guilty of the theft by association. He was sent to Fort Riley to re-training school and upon completion, he was given an option to stay in or go home with an under other than honorable conditions discharge. He chose the latter option.

b. He can now truly say that his was a self-inflicted stumbling block that was placed in his path, but with the help of God, family and friends, he overcame it and used it as a steppingstone to reach higher heights. He is now 61 years old, an ordained minister, father of 5 and grandfather of 14, a Past Grand Most Worthy Joshua - Heroines of Jericho of the Prince Hall Mason of Florida. and is currently the CEO of Augusta Williams Legacy Irrigation and Landscaping. The Augusta Williams Legacy Irrigation and Landscaping provides employment opportunities to young adults, the unemployed and individuals transitioning from incarceration and substance abuse. He continued his

education, attaining a PHD in Christian Education. He knows he cannot change what happened in the past, but he can and did change himself.

3. The applicant provides a copy of an unspecified event program, which contains his past and present Masonic titles, the honors and awards received, and a photograph.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 25 January 1982 for period of 3 years.

b. The applicant accepted nonjudicial punishment (NJP) as follows:

- On 22 March 1982, for disobeying a superior noncommissioned officer on or about 18 March 1982
- On 11 April 1983, for disobeying a lawful order on two occasions on or about 31 March 1983 and 4 April 1983

c. On 11 April 1983, the applicant's immediate commander notified the applicant of his intent to initiate separation proceedings under Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14 for misconduct – pattern of misconduct. Specifically for his special court-martial (not available for review), two NJPs, and his unsatisfactory performance in training.

d. The applicant consulted with legal counsel on 15 April 1993. He was advised of the basis for the contemplated discharge, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him. He waived his administrative rights and elected not to submit a statement in his own behalf.

e. In a letter addressed to the Commander, U.S. Army Correctional Activity, written by the applicant and dated 15 April 1983, a court-martial in February 1983 was mentioned; however, the applicant's service record is void of any court-martial related documents. The letter also references the court-martial, as part of the reason for separation, and indicates his punishment included reduction to E-1 and confinement from 18 February 1983 through 13 March 1983.

f. DD Form 214 reflects the applicant was discharged on 22 April 1983 under the provisions of AR 635-200, paragraph 14-12b, for misconduct – pattern of misconduct, separation code JKM (JKE), reenlistment code RE-3B, and his service characterization of under other than honorable conditions. He served 1 year, 2 months, and 1 day of net active service this period, with lost time from 18 February 1983 thru 16 March 1983.

5. There is no evidence that the applicant applied to the Army Discharge Review Board for review of his discharge within the board's 15 year statute of limitations.

6. Army Regulation 635-200 (Personnel Separations Enlisted Personnel) provides action will be taken to separate a member for a pattern of misconduct. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

7. 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:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial 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 evidence shows the applicant exhibited a pattern of misconduct (two NJPs, court-martial, and lost time). As a result, his chain of command initiated separation action against him. He was discharged for misconduct – pattern of misconduct and his service characterization of under other than honorable conditions. He completed 1 year, 2 months, and 1 day of net active service this period, and he had lost time from 18 February thru 16 March 1983. The Board found no error or injustice in his separation processing. Also, the applicant provided insufficient evidence of a persuasive nature of post-service achievements or letters of reference in support of a clemency determination. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
  - a. Paragraph 3-7a states 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. Paragraph 3-7b states 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. Chapter 14, of the version in effect at the time, established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. It provided that action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally appropriate for a Soldier discharged under this chapter. However, the separation authority could direct an honorable discharge if merited by the Soldier's overall record.

3. Hagel Memorandum, dated 3 September 2014, states liberal consideration will be given in petitions for changes in characterization of service to service treatment records entries which document one or more symptoms which meet the diagnostic criteria of PTSD or related conditions. Special consideration will be given to VA determinations which documents PTSD or PTSD related conditions connected to military service. In cases in which PTSD or PTSD related conditions may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the under other than honorable conditions characterization of service.

//NOTHING FOLLOWS//