

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 April 2023

DOCKET NUMBER: AR20230009845

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

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 was never granted leave after 10 months of being in the military. His physical health was deteriorating and he became worn down from the rigors of training. He was transferred to the infantry despite training in military occupational specialty 21G (Pershing Electronic Maintenance Specialist) because he was not issued a security clearance. He "technically flunked out" losing 2 weeks of training that resulted in his inability to pass.
3. The applicant enlisted in the Regular Army on 7 October 1981.
4. Block 17 (Civilian Education and Military Schools) of his DA Form 2-1 (Personnel Qualification Record – Part II) shows he received the following training:
 - Pershing Electronic Maintenance Specialist (21G), 22 weeks, 1982
 - Pershing Systems Maintenance (21G), 19 weeks, did not complete in 1982
 - Infantryman (11B), 13 weeks, 1982
5. On 1 July 1982, the applicant underwent a mental evaluation. The DA Form 3822-R (Report of Mental Status Evaluation) of record shows the applicant was referred due to his inability to adjust to the Army. He denied suicidal or homicidal ideations. He was

psychiatrically cleared for any administrative action deemed appropriate by the command.

6. On 7 July 1982, he accepted nonjudicial punishment for one specification of disobeying a lawful order from a superior noncommissioned officer (NCO) to clean the barracks; his punishment included reduction to private/E-1.

7. A DA Form 2496 (Disposition Form) shows the applicant was counseled, in part, for the below discrepancies:

- 30 June 1982 – sleeping on duty
- 1 July 1982 – mental hygiene
- 4 July 1982 – failure to repair
- 6 July 1982 – motivation/attitude
- 7 July 1982 – motivation/attitude

8. On 16 July 1982, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 5-31, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), under the Expeditious Discharge Program (EDP). The reasons for his proposed action were the applicant's attitude problem since arriving at Fort Sill, he refused to train to his full potential, he expressed a desire not to be infantry and to be discharged, and on two occasions he refused to train with the company by refusing to participate in physical training and the confidence course.

9. On 16 July 1982, the applicant acknowledged:

- notification of his proposed discharge and voluntary consent to discharge
- he waived his right to submit a statement on his own behalf
- he may encounter substantial prejudice if his service is characterized as under honorable conditions
- he was afforded an opportunity to consult with counsel
- if he declined to accept the discharge voluntarily, he could be subject to separation under other provisions of law or regulation
- he could not apply for enlistment for a period of 2 years from the date of discharge

10. On 16 July 1982, the immediate commander initiated separation action against the applicant for expeditious discharge. The commander indicated the applicant lacked the desire to become an infantryman. He failed his enlistment military occupational specialty (MOS) as a 21G, Pershing Missile Repairman, and was reclassified to MOS 11B. The applicant stated he would not train to his potential and wanted out of the U.S. Army. He had no motivation to succeed and a very poor attitude. He recommended that her

period of service be characterized as general, under honorable conditions. The intermediate commander recommended approval.

11. On 3 August 1982, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 5-31, AR 635-200 for expeditious discharge. He would be issued a General Discharge Certificate.

12. On 10 August 1982, he was discharged with a general characterization of service. His DD Form 214 shows he completed 8 months and 28 days of active service with no lost time. He was assigned separation code LGH with the narrative reason for separation listed as "Expeditious Discharge Program (Failure to Maintain Acceptable Standards for Retention)," with reentry code 3. It also shows he was awarded or authorized:

- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Sharpshooter Marksmanship Qualification Badge with Hand Grenade

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

14. By regulation (AR 635-200), action will be taken to separate members who have demonstrated that they cannot or will not meet acceptable standards required of enlisted personnel in the Army.

15. In reaching its determination, the Board can consider the applicant's petition and her 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. The applicant did not provide the Board with any evidence upon which to base clemency. Considering the applicant's behavior, his commander was liberal in awarding him an under honorable conditions (honorable) character of service.

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.

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 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 1-9d (Honorable Discharge) states an honorable discharge is a separation with honor. Issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty during the member's current enlistment of current period of service with due consideration for the member's age, length of service, grade, and general aptitude.

b. Paragraph 1-9e (General Discharge) states a general discharge is a separation from the Army under honorable conditions of an individual whose military record is not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 5-31 of the regulation states action will be taken to separate members who have demonstrated that they cannot or will not meet acceptable standards required of enlisted personnel in the Army because of existence of one or more of the following conditions:

- 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/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//