

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 May 2024

DOCKET NUMBER: AR20230010078

APPLICANT REQUESTS: reconsideration of his previous request to upgrade character of service from under other than honorable conditions to under honorable conditions (general).

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

- Letter, subject: Request Upgrade of Discharge DD [Form] 214 [(Certificate of Release or Discharge from Active Duty)] (Reconsideration), dated 13 July 2023
- Statement of Support, dated 13 July 2023
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20180010635, dated 16 September 2019

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20180010635 on 15 August 2019.

2. The applicant provides new argument which was not previously considered by the Board.

3. The applicant provides a statement of support from T.W., dated 13 July 2023, which states he served on active duty with the applicant. The applicant maintained an unblemished military record until 27 February 1986. On that date, the applicant received nonjudicial punishment under the Uniform Code of Military Justice (UCMJ). Importantly, the applicant was not charged by the German police and the case was ultimately dismissed. He requests that the Board reevaluate its decision and upgrade the applicant's discharge to honorable.

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

- a. He enlisted in the Regular Army on 14 August 1979.

b. On 1 October 1985, the applicant received notification of an Article 32 Investigation and his rights pertaining to the board.

c. A DD Form 457 (Investigating Officer's Report), dated 4 November 1985, indicates the investigating officer recommended a general court-martial of all charges except violation of UCMJ Article 111; operating a vehicle in a reckless manner. The available evidence was insufficient to prove that the applicant exhibited culpable disregard beyond that of operating a vehicle under the influence of alcohol.

d. He accepted nonjudicial punishment on 27 February 1986 for one specification of operating a vehicle while drunk on or about 28 August 1985. His punishment included reduction to specialist/E-4.

e. His DD Form 214 shows he was discharged from active duty on 21 March 1986 with an under other than honorable conditions characterization of service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He was assigned separation code KFS and the narrative reason for separation listed is as "For the Good of the Service – In Lieu of Court Martial" with RE code 3; 3C. He completed 6 years, 7 months, and 8 days of active service. It also shows he was awarded or authorized:

- Army Service Ribbon
- Army Achievement Medal
- Noncommissioned Officer Professional Development Ribbon
- Good Conduct Medal (2nd Award)
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Sharpshooter Badge with Hand Grenade Bar
- Sharpshooter Badge with M-72 Grenade Launcher Bar
- Drivers Badge (Wheel)

5. On 16 April 1987, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. On 16 September 2019, the ABCMR rendered a decision on the applicant's request to correct his military record. The Board determined that partial relief was warranted and recommended that all Department of the Army records of the applicant be corrected to reflect his prior period of active service as honorable on his DD Form 214. However, the Board also found that the evidence presented was insufficient to warrant a portion of the requested relief. As a result, the Board denied the applicant's request for an upgrade of his characterization of discharge.

7. By regulation (AR 635-200), a member who has committed an offense or offenses, the punishment for which, under the UCMJ, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other Than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the Service.

8. 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 relief is not warranted.

2. The Board considered the applicant's request for reconsideration of his previous request to upgrade character of service from under other than honorable conditions to under honorable conditions (general).

a. The Board determined the applicant's discharge and characterization of service is appropriate.

b. The applicant was driving while impaired and hit another Soldier with his vehicle. He was arrested by the German Police but not charged. Although he was not charged by the German police, his actions reflected negatively on the Army. It does not matter whether he was charged or not, he was still driving while impaired and he still hit a Soldier; something, for which he has yet to accept responsibility.

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 to amend decision of the ABCMR set forth in Docket Number AR20180010635, dated 15 August 2019.

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

a. An honorable discharge is a separation with honor. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states that a member who has committed an offense or offenses, the punishment for which, under the UCMJ and the MCM; 1984, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the Service. An Under Other Than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the Service.

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//