

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 May 2024

DOCKET NUMBER: AR20230010080

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

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 18 October 1984
- Criminal Background Check Report, 15 March 1984
- Two Character Statements, 16 March 2023 and 29 March 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 served almost 3 years, and his leadership did not like him. He was told he was being discharged due to failure to adapt. He was having personal issues at the time and was struggling mentally, so his leadership believed he was unable to continue being a good Soldier. He informed his first sergeant about his issues and told him he was doing better, so the first sergeant told him he was good to stay in the Army. However, a new first sergeant took over, and he did not believe he should continue to serve in the military. Although he did not contest his separation, he thinks he served honorably his entire enlistment to the best of his ability and did nothing illegal or wrong to warrant a discharge from the Army.
3. The applicant enlisted in the Regular Army on 19 January 1982, for 3 years. The highest rank/grade he held was specialist/E-4.
4. The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice, on two occasions:

a. On 11 May 1984, for absenting himself from his place of duty on or about 12 April 1984 and did remain so absent until on or about 24 April 1984. His punishment included reduction to private first class/E-3.

b. On 2 October 1984, for failing to go at the time prescribed to his appointed place of duty on or about 7 September 1984 and did remain so absent until on or about 7 September 1984.

5. The applicant received general counseling on three occasions between 22 February and 10 July 1984 for:

- missing formation
- failing to follow two lawful orders from a noncommissioned officer
- personal appearance and not showing up for a detail

6. On 13 September 1984 and 21 September 1984, the applicant underwent a complete mental status evaluation and medical examination as part of his consideration for discharge due to his misconduct. His mental status evaluation noted he met the retention standards, was mentally responsible, had the mental capacity to understand and participate in the proceedings, and was psychiatrically cleared for any administrative action deemed appropriate by his command.

7. On 3 October 1984, the applicant's commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Chapter 13, for unsatisfactory performance.

8. The applicant acknowledged receipt of his commander's notification. He consulted with counsel and was advised of the reason for separation and the rights available to him. He understood if he was issued a general discharge, he may encounter substantial prejudice in civilian life. He did not submit a statement in his own behalf.

9. The applicant's chain of command recommended the applicant's separation from the service, under the provisions of Army Regulation 635-200, Chapter 13. As reasons for the proposed action, his immediate commander cited the applicant's disruptive and irresponsible attitude and stated that attempts to counsel and rehabilitate the applicant and to make him a productive Soldier have been met with a total display of apathy on the applicant's part.

10. On 12 October 1984, the separation authority approved the recommended discharge and directed the issuance of a General Discharge Certificate.

11. The applicant was discharged accordingly on 18 October 1984, under the provisions of AR 635-200, Chapter 13, for unsatisfactory performance, with an under honorable conditions (General) characterization of service in the grade of E-3. He received a separation code of "JHJ" and a reenlistment code of "RE-3B" and "3." His DD Form 214 shows:

a. He completed 2 years, 8 months, and 18 days of active service.

b. Lost time from 12 April 1984 to 23 April 1984.

12. The applicant provides the following documents, which are available in their entirety for the Board's review:

a. A criminal background check report shows the applicant has no criminal arrest record in the county.

b. Two letters of support state that he is a loving and caring father, husband, friend, employee, and co-worker with outstanding character and integrity. He loves to help others and sets a notable example for others to follow at work, at home, and in his community.

13. By regulation, Soldiers would be separated due to unsatisfactory performance when in the commander's judgment the individual would not become a satisfactory Soldier; retention would have an adverse impact on military discipline, good order and morale; or the service member would be a disruptive influence in the future.

14. In reaching its determination, the Board can consider the applicants 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 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 conduct and the reason for separation. The applicant was separated for disruptive behavior and irresponsible attitude. The Board majority found no error or injustice in the separation proceedings and designated characterization of service assigned by his commander during separation. The Board minority noted the applicant provided documentation to support his request, including letters of reference

to support clemency and a criminal check. However, based on a preponderance of the evidence, the Board majority concluded that the characterization of service the applicant received upon separation was appropriate.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	■	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. Chapter 13 provided for separation due to unsatisfactory performance when in the commander's judgment the individual would not become a satisfactory Soldier; retention would have an adverse impact on military discipline, good order and morale; the service member would be a disruptive influence in the future; the basis for separation would continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, was unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation would be characterized as honorable or under honorable conditions.

b. 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.

c. 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.

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/NR) 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//