

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 May 2024

DOCKET NUMBER: AR20230010719

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) character of service, and an appearance before the Board via video or telephone.

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

DD Form 149 (Application for Correction of Military Record), with self-authored statement

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, in effect:

a. He served his country exceptionally for over two years. The officers he served under tried to use him as an example. His discharge is a blemish not only on him, but on his entire family. Everything he did in the service was "above and beyond" that of the majority of his peers. He excelled in initial entry training. At his first duty station, he was the only Soldier to pass all of the requirements for the Expert Field Medical Badge. Due to issues within the unit, and without his knowledge, he was transferred to another unit.

b. Upon arriving at his new unit, he performed every task "above and beyond" what was expected. His leadership had a problem with him. They did not appreciate that the troops respected him more than them. His commander declared the applicant said something derogatory to him, and he was sent to confinement. He believes this was done to show the troops even the best can be put in their place. Three weeks after completing his confinement, he was informed that he was being discharged.

c. An Army lawyer convinced him to accept the conditions that were offered and request an upgrade after getting out. He was sick of what was going on and took the

advice. One day of missing formation was used to say that he “acted in a discreditable nature with military authorities.” After leaving the Army, he was immediately successful in every job he held. People’s personalities affected the condition under which he was discharged. Being retired and disabled, he would like the recognition that he served his country honorably. Even a general discharge would be fine.

3. The applicant enlisted in the Regular Army on 11 April 1980, for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 91B (Medical Specialist). The highest rank he attained was private first class/E-3.
4. The applicant accepted nonjudicial punishment under the provisions of the Uniform Code of Military Justice (UCMJ) on two occasions:
 - a. On 2 December 1980, for losing his weapon through neglect, on or about 21 November 1980. His punishment consisted of forfeiture of \$120.00, 14 days of extra duty, and 14 days of restriction.
 - b. On 30 June 1981, for failure to go at the time prescribed to his appointed place of duty, on or about 16 June, 19 June, and 23 June 1981. His punishment consisted of reduction to private/E-2 (suspended), forfeiture of \$130.00 pay (suspended), 14 days of extra duty, and 14 days of restriction. The suspension of his punishment pertaining to reduction in rank and forfeiture of pay was vacated and ordered duly executed on 24 July 1981.
5. The applicant was arrested and confined by civilian authorities on 3 August 1981 for Indecent Exposure. He was fined \$102.00 and released on the same date.
6. The applicant was formally counseled on 6 November 1981 and 11 January 1982 for writing dishonored checks.
7. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ on 15 January 1982, for wrongfully communicating a threat to kill a Soldier and willfully damaging government property, on or about 19 December 1981, for disobeying a lawful order on or about 20 December 1981, and for disobeying a lawful order and being disrespectful in language to his superior noncommissioned officer, on or about 11 January 1982. His punishment consisted of reduction to E-2, forfeiture of \$120.00 pay per month, and seven days of confinement.
8. The applicant underwent a medical examination on 4 February 1982. The examining provider determined the applicant was medically qualified for separation.
9. The applicant's immediate commander notified the applicant on 22 February 1982 of his intent to initiate separation action against the applicant under the provisions of Army

Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, for patterns of misconduct. The applicant acknowledged receipt on that same date.

10. The applicant's immediate commander recommended his separation from service, before the expiration of his term of service, under the provisions of AR 635-200, Chapter 14, based on frequent incidents of misconduct. The commander noted the applicant was a rehabilitative transfer, and his frequent incidents of misconduct involving military authorities showed that he was unwilling to be a satisfactory Soldier.

11. The applicant underwent a mental status examination. The examining provider determined there was no impression of significant mental illness. He was psychiatrically cleared for any administrative action deemed appropriate by the command.

12. The applicant consulted with legal counsel on 29 March 1982 and acknowledged he had been advised of the basis for the contemplated separation action, its effects, the rights available to him, and the effect of waiving his rights. He waived the right to representation by counsel and an appearance before a board of officers to have his case considered. He elected not to submit a statement in his own behalf.

13. The applicant's intermediate commanders recommended approval of the separation action and further recommended waiver of additional rehabilitative efforts.

14. The separation authority approved the recommended discharge on 18 May 1982, waived the rehabilitative transfer requirement, and directed the issuance of a DD Form 794A (UOTHC Discharge Certificate).

15. The applicant was discharged on 26 May 1982, under the provisions of AR 635-200, paragraph 14-33b (1), by reason of frequent incidents of a discreditable nature with civil or military authorities. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was characterized as UOTHC, with separation code JKA and reenlistment code RE-3, 3B. He was credited with 2 years, 1 month, and 15 days of net active service, with one day of lost time. He was awarded or authorized the following:

- Parachute Badge
- Expert Field Medical Badge
- Army Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Rifle bar (M16)

16. Regulatory guidance provides when an individual is discharged under the provisions of AR 635-200, Chapter 14, by reason of misconduct, an UOTHC characterization of service is normally appropriate. However, the separation authority may direct a general discharge if merited by the Soldier's overall record.

17. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined 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.

9/24/2024

X

CHAIRPERSON

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, USC, 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. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that applicants do not have the right to a hearing before the ABCMR. The Director of the ABCMR may grant a formal hearing whenever justice requires.
3. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a provides that 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 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of

misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

4. 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.

//NOTHING FOLLOWS//