

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 October 2024

DOCKET NUMBER: AR20230010733

APPLICANT REQUESTS: his under honorable conditions (general) discharge be upgraded 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)
- Army Review Boards Agency (ARBA) Letter
- ARBA Email

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 he works for New York State, and he would like to add his service time to it, but they said he would need to have an honorable discharge on his DD Form 214, instead of under honorable conditions.
3. The applicant enlisted in the Regular Army on 22 August 1980 for three years. His military occupational specialty was 94B (Food Service Specialist).
4. The applicant served in Germany from 11 January 1981 through 10 May 1982.
5. The applicant accepted non-judicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 1 February 1982, for without authority failing to go at the time prescribed to his appointed place of duty on or about 9 January 1982; and wrongfully appearing at duty with an unclean uniform on or about 13 January 1982. His punishment consisted of reduction to private 2/E-2, forfeiture of \$160.00 for one month, and 7 days in a correctional confinement facility.

6. The applicant's immediate commander notified him on 13 March 1982 that he was initiating actions to separate him from service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), paragraph 5-31 (Expeditious Discharge Program (EDP)), with an under honorable conditions (general) discharge. The reasons for the proposed action were that the applicant was totally unsuited for military life. His poor attitude and disrespect for authority have been totally unacceptable. He had been counseled. He had no concept of his obligations to the military and, therefore, under no circumstances would he be recommended for promotion.

7. The applicant acknowledged receipt of the separation notification on the same date and voluntarily consented to the discharge. He understood that he may expect to encounter substantial prejudice in civilian life if an under honorable conditions, general discharge was issued to him. He was advised of the rights available to him. He elected not to submit a statement in his own behalf.

8. The applicant's commander formally recommended the applicant's separation from service under the provisions of AR 635-200, Chapter 5, and that he be furnished a general discharge. The separation authority approved the recommended discharge on 30 April 1982 and directed the issuance of a General Discharge Certificate.

9. The applicant was discharged on 11 May 1982. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 5-31, for failure to maintain acceptable standards for retention (EDP), with Separation Code JGH and Reenlistment Code RE-3. His service was characterized as under honorable conditions (general). He completed 1 year, 8 months, and 20 days of net active service. His awards include the Army Service Ribbon.

10. Paragraph 5-31, provides for discharge of enlisted personnel who completed at least six months but less than 36 months of active duty and who demonstrated that they could not or would not meet acceptable standards required of enlisted personnel in the Army.

11. In reaching its determination, the Board can consider the applicant's petition and 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

evidence of record shows the applicant's commander deemed the applicant totally unsuited for military life. Despite being counseled, the applicant displayed a poor attitude and disrespect for authority, he had no concept of his obligations to the military and should not be recommended for promotion. As a result, his command initiated separation action against him. The applicant was discharged in May 1982 under the provisions of AR 635-200, paragraph 5-31, for failure to maintain acceptable standards for retention (Expeditionary Discharge Program). His service was characterized as under honorable conditions (general). He completed 1 year, 8 months, and 20 days of net active service. The Board found no error or injustice in her separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. 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.2.

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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, 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 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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 5-31 of the regulation in effect at the time provided for the discharge of enlisted personnel who had completed at least six months but less than 36 months of active duty and who had demonstrated that they could not or would not meet acceptable standards required of enlisted personnel in the Army because of the existence of one or more of the following conditions: poor attitude, lack of motivation, lack of self-discipline, inability to adapt socially or emotionally, or failure to demonstrate promotion potential. No individual would be discharged under this program unless the individual voluntarily consented to the proposed discharge. Individuals discharged under this provision of the regulation were issued either a general or honorable discharge.

3. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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 on the basis of equity, injustice, or clemency grounds, Boards 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//