

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 October 2024

DOCKET NUMBER: AR20230010830

APPLICANT REQUESTS: reconsideration of his previous request for:

- an upgrade of his under honorable conditions (general) characterization of service
- a change of his Separation Program Designator (SPD) code and corresponding narrative reason for separation to an unspecified code and reason
- a change to Reentry Eligibility (RE) code to an unspecified code

APPLICANT'S SUPPORTING DOCUMENT CONSIDERED BY THE BOARD:

DD Form 293 (Application for the Review of Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20080016359 on 8 January 2009.
2. The applicant did not provide a statement in support of his request.
3. The applicant enlisted in the Regular Army on 17 July 1979, for 3 years. The highest rank/grade he held was private first class/E-3.
4. The applicant received formal counseling on five occasions and a letter of reprimand between 24 March 1981 and 18 June 1981 for:
 - missing formation three times
 - having an attitude problem
 - assaulting another Soldier
 - failing to be at his appointed place of duty
5. The applicant accepted non-judicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for the following violations of the UCMJ:

a. On 21 April 1981, for being disrespectful in language towards his superior noncommissioned officer, on or about 14 April 1981. His punishment consisted of forfeiture of \$130.00 pay, reduction to private/E-2, and extra duty for 14 days.

b. On 3 June 1981, for failing to go at the time prescribed to his appointed place of duty, on or about 2 June 1981. His punishment consisted of forfeiture of \$130.00 pay, reduction to private/E-1, and confinement at correctional custody facility for 7 days.

c. On 4 September 1981, for failing to go at the time prescribed to his appointed place of duty, on or about 28 August 1981, 31 August 1981, 1 September 1981, and 3 September 1981. His punishment consisted of reduction to private/E-1, forfeiture of \$116.00 pay, extra duty for 14 days, and restriction for 14 days.

6. On 18 September 1981, 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 (Separation for Unsuitability), for unsuitability because of apathy, defective attitudes, or inability to expend effort constructively.

7. On 21 September 1981, 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 elected to submit statements in his own behalf; however, there are no such statements filed in his available record.

8. The applicant's immediate commander 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 frequent involvement in disciplinary actions, his habitual tardiness, and his unwillingness to adapt to military regimen. He further noted that the applicant demonstrated little promotion potential and contributed little to his platoon's mission accomplishment.

9. On 28 October 1981, the separation authority approved the recommended discharge and directed the issuance of a General Discharge Certificate.

10. On 3 November 1981, the applicant underwent a mental status evaluation and medical examination as part of his separation process. His mental status evaluation noted, he met the retention standards, was mentally responsible, was able to distinguish right from wrong and adhere to the right and had the mental capacity to understand and participate in the proceedings. It was determined the applicant was psychiatrically and medically qualified for separation.

11. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged in the rank/pay grade of private/E-1 on 10 November 1981, under the provisions of Army Regulation 635-200, Chapter 13, paragraph 13-4c. The narrative reason for his separation was Unsuitable – Apathy, defective attitudes. His service was characterized as under honorable conditions (general). He received an SPD code of 'JMJ' and an RE code of "RE-3." He was credited with 2 years, 3 months, and 24 days of net active service during the period covered.

12. On 8 February 1986, the applicant was issued a DD Form 215 (Correction to DD Form 214), that corrected his DD Form 214 by adding the additional RE code of "RE-3C" to block 27 (RE Code).

13. The Board should consider the applicant's argument and evidence, along with the overall 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.

a. Discharge Upgrade: Deny. The evidence shows the applicant exhibited a pattern of misconduct consisting frequent counseling for missing formation three times, having an attitude problem, assaulting another Soldier, and failing to be at his appointed place of duty. He also received multiple NJPs for being disrespectful in language and failing to go at the time prescribed to his appointed place of duty. As a result, his chain of command initiated separation action against him for unsuitability because of apathy, defective attitudes, or inability to expend effort constructively. He received a general discharge. The Board found no error or injustice in his 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.

b. Narrative Reason for Separation and corresponding codes: Deny. The narrative reason for separation is governed by specific directives. The applicant was discharged under the provisions of Chapter 13, AR 635-200. The narrative reason specified by Army Regulations for a discharge under this chapter at the time for an enlisted Soldier is Unsuitability, the separation code is JMJ, and the reentry code is "RE 3C." AR 635-5, Separation Documents, governs preparation of the DD Form 214 and dictates that entry of the narrative reason for separation, entered in block 28, separation code, entered in

block 26, and RE Code, entered in block 27 of the form, will be entered exactly as listed in AR 635-5-1, Separation Program Designator Codes. The Board found no mitigating factors that would merit a change to the applicant's narrative reason for discharge or corresponding odes and the applicant does not provide an argument or justification that these entries are in error or unjust. In view of the foregoing, the Board determined that the reason for discharge and corresponding codes were both proper and equitable and there is no reason to change these entries.

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 the decision of the ABCMR set forth in Docket Number AR20080016359 on 8 January 2009.

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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. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from their last period of service with a non-waivable disqualification

2. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code "JMJ" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 13, paragraph 13-4c. Additionally, the established RE code for Soldiers separated under this authority and for this reason is RE-3 and/or RE-3C.

3. 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. 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. 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 13 provided procedures and guidance for elimination of enlisted personnel found to be unsuitable for further military service. Action was taken to separate a member for unsuitability when it was clearly established, they would not

develop sufficiently to participate satisfactorily in military training and/or become a satisfactory soldier. A member was subject to separation for unsuitability when one or more of the following conditions existed: Inaptitude, personality disorder, and/or Apathy (lack of appropriate interest), defective attitudes, and inability to expend effort constructively. Members separated because of unsuitability under this regulation would be characterized as honorable or under honorable conditions.

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.

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//