

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 21 May 2024

DOCKET NUMBER: AR20230011093

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge to an honorable discharge.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement
- Character reference letters (2)

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 his discharge should be upgraded because he was misinformed regarding his status. He was young and immature when he joined the Army. After completing Airborne school, he was assigned to an elite Special Forces unit. He learned more during that assignment than he did during the rest of his life.

a. He was always considered a good Soldier but could not stay out of bar fights and trouble with the civilian police. Also, his ex-wife and her mother would repeatedly call his first sergeant and try to get him into trouble.

b. He received a court-martial and was offered an honorable discharge to leave the military. He did not want to be discharged so, he decided to fight the court-martial. The attorney he chose to defend him ended up being the attorney that prosecuted him, and he lost the court-martial trial. He was told he would receive a less than honorable discharge, but he could have it changed after he was discharged.

c. After his separation, he obtained a good job with good benefits and is still with the same company today. After 40 years, he has received many promotions and is now in a

top management position. Most of the leadership skills that he learned in the Army Special Forces unit have made him very successful in his career and a great leader.

d. He has been married for 34 years and has four grown children. Just as the Army taught him, he taught his children to be hard workers and to never take for granted all we have in our country. He is coming to the end of his career, getting older, and is not in the best of health. He realizes that being a Veteran is a great privilege and he wants to someday be buried at Jefferson Barracks with some of his friends and family members. He sees himself hanging out and serving at the local Veterans of Foreign Wars or donating time at the Department of Veterans Affairs hospital but does not want to do that without an honorable discharge.

3. On 28 December 1977, the applicant enlisted in the Regular Army in the rank/pay grade of private (PV1)/E-1 for a period of 3 years. Upon completion of initial entry training and Airborne school, he was assigned to the Signal Company of 7th Special Forces Group (Airborne) at Fort Bragg, NC. He was advanced to the rank/pay grade of private (PV2)/E-2 on 28 June 1978.

4. The applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on the following dates for the reasons shown:

- 8 April 1978 – illegible reason
- 27 September 1978 – failed to go at the time prescribed to his appointed place of duty on or about 12-15 and 19-22 September 1978
- 7 March 1979 – without authority, absented himself from his place of duty for approximately 45 minutes; his punishment included, in part, reduction to PV1
- 3 May 1979 – failed to go at the time prescribed to his appointed place of duty

5. Summary Court-Martial (SCM) Order Number 3 published by Headquarters, 7th Special Forces Group (Airborne), 1st Special Forces, Fort Bragg, NC on 19 September 1979 shows the applicant was arraigned before an SCM and found guilty of one specification of being found sleeping upon his sentinel post on 17 July 1979. His sentence included reduction to PV1, forfeiture of \$278.00 pay for one month, and hard labor without confinement for a period of 45 days. The sentence was adjudged on 17 September 1979. It was approved and ordered to be executed on 17 September 1979.

6. The applicant accepted NJP under the provisions of Article 15, UCMJ on 27 September 1979, for being found sleeping upon his sentinel post on or about 12 September 1979. His sentence included 14 days of extra duty and forfeiture of \$97.00.

7. The applicant's record is void of documentation showing the facts and circumstances regarding his administrative separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations) Chapter 14. However, his DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms:

- he was discharged in the grade of E-1 on 21 December 1979, under the provisions of Army Regulation 635-200, paragraph 14-33a(3), by reason of Misconduct-Frequent Incidents of a Discreditable Nature with Civil or Military Authorities
- he was assigned Separation Code "JKA" and Reenlistment Code "RE-3"
- he completed 1 year, 11 months, and 23 days of net active service this period
- his service was characterized as UOTHC
- he did not complete his first full term of service.

8. The applicant provides character reference letters from his brother and the Vice President of the company where he has worked for over 40 years. Each author rendered favorable comments about the applicant's work ethic, leadership, organizational skills, and competence. These letters are available in their entirety for the Board's consideration.

9. Army Regulation 635-200, Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. 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 UOTHC 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.

10. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The applicant's record is void of documentation showing the facts and circumstances regarding his administrative separation. However, his DD Form 214 confirms he was discharged in the grade of E-1 on 21 December 1979, by reason of Misconduct-Frequent Incidents of a Discreditable Nature with Civil or Military Authorities. He was credited with 1 year, 11 months, and 23 days of net active service

this period. His service was characterized as under other than honorable conditions. The Board found no error or injustice in his available separation processing.

b. The applicant provided character reference letters in support of a clemency determination. The authors (his brother and the vice president of the company where he has worked for over 40 years) rendered favorable comments about the applicant's work ethic, leadership, organizational skills, and competence. The Board took the letters into consideration and determined that his service did not rise to the level required for an honorable characterization (given his multiple NJPs and court-martial conviction); however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board determined that such upgrade did not change the underlying reason for his separation and thus the narrative reason for separation and corresponding codes should not change.

BOARD VOTE:

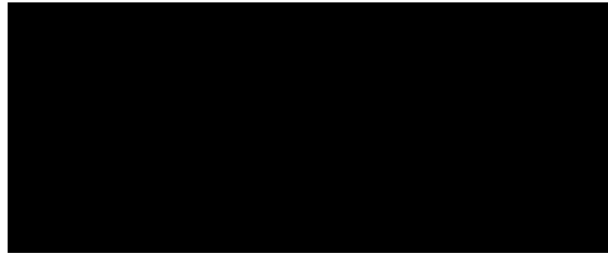
<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 21 December 1979, as follows:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the characterization of his discharge to fully honorable.



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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. It states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.
3. Army Regulation 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 (DRB) 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 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, 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//