

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 July 2024

DOCKET NUMBER: AR20230011143

APPLICANT REQUESTS: in effect, an upgrade of his under other than honorable conditions discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record).

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 was discharged unjustifiably and without legal representation. He believes he was discriminated against. The reason the correction is warranted is because the discharge was unjust and it has affected his life and the way he lives.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 8 July 1980 for a period of three years.
 - b. On 24 October 1980, the applicant accepted nonjudicial punishment (NJP) for having received a lawful order, willfully disobey the same on or about 21 October 1980.
 - c. On 14 January 1981, the applicant accepted NJP for participating in a breach of peace by wrongfully engaging in a fist fight in the Madigan Club on or about 9 December 1981.
 - d. On 6 March 1981, the applicant accepted NJP for failure to go to his appointed place of duty; and wrongful possession of marijuana. Both violations were on or about 18 February 1981. His punishment included reduction to private (E-1).

e. On 21 June 1981, the applicant accepted NJP for possession of an unregistered firearm.

f. On 22 July 1981, a DA Form 3822-R (Report of Mental Status Evaluation) shows, the applicant underwent a mental status evaluation in conjunction with a pending Chapter 14, under provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). The physician noted the applicant felt he did not fit the cultural norms of the Army nor his unit, but he wished to remain on active duty and felt the Article 15 was unjustified. The physician further noted the applicant had the mental capacity to understand and participate in the proceedings.

f. On 3 August 1981, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 14, AR 635-200 for other acts or patterns of misconduct. The specific reasons for his proposed recommendation were the applicant's frequent incidents of misconduct.

g. On 4 August 1981, after consulting with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if an under other than honorable conditions discharge is issued to him
- may be ineligible for may or all benefits as a Veteran under both Federal and State laws
- he is ineligible for enlistment in the U.S. Army for a period of 2 years after discharge
- he elected not to submit matters

h. On 4 August 1981, the immediate commander initiated separation action against the applicant under the provisions of AR 635-200, Chapter 14, for other acts or patterns of misconduct. He recommended that his period of service be characterized as under other than honorable conditions. The intermediate commanders recommended approval.

i. On 18 September 1981, consistent with the chain of command recommendations, the separation authority directed that the applicant be separated for misconduct, in accordance with Chapter 14, AR 635-200, paragraph 14-33b(1). He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted grade.

j. On 5 October 1981 he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 2 months, and 28 days of active service with no lost time. He was assigned separation code JKA and the

narrative reason for separation listed as “Misconduct – frequent incidents of a discreditable nature with civil or military authorities.”, with reentry code 3. It also shows he was awarded or authorized the Expert Qualification Badge with M-16 Rifle Clasp.

4. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within the Board's 15-year statute of limitations.

5. By regulation, action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

6. 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 evidence shows the applicant exhibited a pattern of misconduct consisting of multiple NJPs for participating in a breach of peace by wrongfully engaging in a fist fight, failure to go to his appointed place of duty, wrongful possession of marijuana, and possession of an unregistered firearm. As a result, his chain of command initiated separation action against him. He was separated with an under other than honorable conditions 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 evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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.



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 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 1-13a (Honorable Discharge) states an honorable discharge is a separation with honor. 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 1-13 b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

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/NRs) 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 based on 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//