

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 May 2024

DOCKET NUMBER: AR20230011210

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
Two DD Forms 293 (Application for the Review of Discharge)

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 AC87-00936 on 30 March 1988.

2. The applicant states he was young, dumb, stupid, and ignorant. He let his ego get the best of him. He knew it was wrong and made a mistake. If he could do it all over again, he would. It is just him now that his family is gone. He is supposed to be a fighter not a quitter.

3. A review of the applicant's service records show:

a. He enlisted in the Regular Army on 3 October 1979.

b. He served in Germany from 19 January 1980 to 27 September 1982.

c. On 25 November 1980, the applicant underwent a medical examination for the purpose of separation. His evaluation determined by a medical professional that he was qualified for separation.

d. On 25 November 1980, charges were preferred on the applicant for being absent without leave from 16 July 1980 to 12 November 1980.

e. On 25 November 1980, the applicant consulted with counsel and voluntarily submitted a request for discharge for the good of the service under the provisions of Chapter 10, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel). He was making the request of his own free will and had been advised of the implications

that are attached to it. He acknowledged that he was guilty of the charge against him or of a lesser included offense therein contained which also authorized the imposition of a bad conduct or dishonorable discharge.

- he was advised by counsel of his rights, the offense with which he was charged, the defenses which appear available at the time, and the maximum punishment if he were found guilty
- he understood that if his request for discharge was approved, he may be discharged under other than honorable conditions and he may be deprived of many or all Army benefits
- he also understood that he may expect to encounter substantial prejudice in civilian life because of an under other than honorable discharge
- he submitted a personal statement with his request, which states he was getting tired of it and had many problems at home

f. On 10 December 1980, the separation authority approved the applicant request for discharge for the good of the service under the provisions of Chapter 10, Army Regulation 635-200. An Under Other Than Honorable Conditions Discharge Certificate would be furnished. The applicant would be reduced to the lowest enlisted grade effective the date of the approval as required by regulation.

g. On 23 February 1981, he was discharged with an under other than honorable conditions characterization of service under Chapter 10, Army Regulation 635-200, administrative discharge for conduct triable by court-martial. His DD Form 214 shows he completed 1 year and 27 days of active service with lost time from 16 July 1980 to 11 November 1980.

4. The applicant applied to the Army Discharge Review Board for an upgrade of his characterization of service and after careful consideration was denied relief.

5. The applicant previously applied to the ABCMR for an upgrade of his characterization of service on 30 March 1988. After thorough examination, his request was denied.

6. By regulation, a member who has committed an offense or offenses, the punishment for any of which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other Than Honorable Discharge Certificate normally is appropriate for a member who is discharge for the good of the service.

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

BOARD DISCUSSION:

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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AC87-00936 on 30 March 1988.

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. 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. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude.

b. Paragraph 1-13b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 (Discharge for the Good of the Service) states a member who has committed an offense or offenses, the punishment for any of which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service.

2. 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. 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//