

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 May 2024

DOCKET NUMBER: AR20230011257

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions discharge (General)
- a personal appearance before the Board

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 wants an honorable discharge because he was discharged for the wrong reasons. He annotated sexual assault/harassment as an issue/condition related to his request.
3. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 17 March 1983.
  - b. DA Form 1695 (Oath of Extension of Enlistment) shows that on 14 March 1986, he extended his enlistment for a period of one month.
  - c. He reenlisted on 21 March 1986.
  - d. DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice), dated 5 September 1986, shows the applicant accepted nonjudicial punishment (NJP) for violating Article 121 of the UCMJ, by stealing cologne, of a value of about \$12.13 more or less, the property of the Schofield Barracks Main Exchange, on or about 25 August 1986. His punishment included reduction to private first class/E-3.

e. On 2 October 1986, a bar to reenlist was imposed by his company commander due to his UCMJ violation and dishonored checks.

f. On 1 December 1986, he was flagged for suspension of favorable personnel action, pending separation proceedings in accordance with Chapter 13 of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel).

g. On 4 December 1986, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 13, AR 635-200 for unsatisfactory performance.

h. After consultation with legal counsel, the applicant acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for an upgrade request
- he will be ineligible to apply for enlistment in the U.S. Army for a period of 2 years following discharge

i. On 5 December 1986, the immediate commander initiated separation action against the applicant for unsatisfactory performance. He recommended that his period of service be characterized as general, under honorable conditions. He also requested waiver of the rehabilitative reassignment of the applicant due to him being a substandard performer who needs constant supervision and his unwillingness to alter his behavior.

j. On 5 January 1987, the battalion commander approved separation of the applicant and suspended separation action until 3 July 1987.

k. On 16 March 1987 and 16 June 1987, he was counseled on the contemplated elimination under the provisions of AR 635-200, Chapter 13.

l. On 30 June 1987, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 13-2, AR 635-200 for unsatisfactory performance.

m. After consultation with legal counsel on 30 June 1987, the applicant acknowledged:

- the rights available to him and the effect of waiving said rights

- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for an upgrade request
- he will be ineligible to apply for enlistment in the U.S. Army for a period of 2 years following discharge

n. On 1 July 1987, the immediate commander initiated separation action against the applicant for unsatisfactory performance. He recommended that his period of service be characterized as general, under honorable conditions. He also requested waiver of the rehabilitative reassignment of the applicant due to failed counseling attempts.

o. On 8 July 1987, the battalion commander approved separation of the applicant, and directed a general, under honorable conditions discharge and waived the rehabilitative reassignment requirement.

p. The applicant was discharged from active duty on 27 July 1987 with an under honorable conditions (General) characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 4 years, 4 months, and 11 days of active service. He was assigned separation code JHJ and the narrative reason for separation listed as "Unsatisfactory Performance," with a reentry code of 3.

4. On 14 December 2023, the Case Management Division (CMD) sent a request for redacted CID (Criminal Investigation Division) and Military Police Reports (ROI) for sexual assault/harassment pertaining to the applicant.

5. On 3 January 2024, CID responded to the request made by CMD and stated that their search for records pertaining to the applicant yielded no sexual assault/harassment results.

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

7. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

8. By regulation (AR 635-200), action may be taken to separate a Soldier when it is determined that he or she is unqualified for further military service because of unsatisfactory performance.

BOARD DISCUSSION:

1. 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 Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for unsatisfactory performance. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. 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. 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. Chapter 13 of the regulation states a member may be separated when it is determined that he or she is unqualified for further military service because of unsatisfactory performance. The service of members separated because of unsatisfactory performance will be characterized as honorable or under other than honorable conditions, as warranted by their military record.

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//