

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 June 2024

DOCKET NUMBER: AR20230011595

APPLICANT REQUESTS: an upgrade of his characterization of service from under conditions other than honorable to honorable and a personal appearance before the Board.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 7 August 2023
- self-authored statement

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, in effect, while serving in Germany, he was having trouble with another Soldier, and they ended up fighting. While fighting the other Soldier, he saw a shiny object wrapped around the other Soldier's hand, he thought it was a knife and he hit the other Soldier. What was thought to be a knife ended up being a shiny belt buckle wrapped around the other Soldier's hand. He ended up having charges brought against him. When he sought legal counsel, his attorney told him he did not have to go to trial and could get out of the Army if he wanted to. He wanted to go home to his wife and family, so he requested to be released. At the time of him signing his paperwork, he was unable to read well. If he knew he was going to receive discharge under conditions other than honorable, he would not have signed the form. He believes an under other than honorable discharge is almost like receiving a dishonorable discharge. He did not deserve the discharge he received. It destroyed his life, and if he could do his career over again, he would have chosen to stay in the Army.

3. The applicant enlisted in the Regular Army on 22 February 1977 for a 4-year period. He was awarded military occupational specialty 11C (Indirect Fire Infantryman) and the highest rank he attained was private first class/E-3.

4. The applicant received company grade nonjudicial punishment under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for:

a. Unlawfully stomping another Soldier, Private [REDACTED], on the hand with his foot on or about 18 April 1977. His punishment imposed was forfeiture of \$87.00; and seven days correctional custody, suspended for 14 days.

b. Failing to go to his prescribed place of duty on or about 18 January 1978 and on or about 28 January 1978. His punishment imposed was extra duty for seven days; and restriction for 14 days, suspended for 30 days until 4 March 1978.

c. Willfully disobeying a lawful order from his superior noncommissioned officer and a disobeying a lawful command from his superior commissioned officer, to shave, on or about 26 April 1978. His punishment imposed was forfeiture of \$50.00 and extra duty for 14 days.

5. Court-martial charges were preferred against the applicant on 8 December 1978, for violation of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows he was charged with one specification of committing an assault upon another Soldier by striking him in the face with his fist and intentionally inflicting grievous bodily harm upon him, to wit: a fractured jaw in four places and blood collecting behind an eye on or about 17 November 1978. He was referred for trial to a special court-martial.

6. The applicant consulted with legal counsel and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal

advice, this decision was his own. Additionally, he did not make an election regarding his right to submit statements in his own behalf.

7. The separation authority approved the applicant's request for discharge for the good of the service on 9 January 1979. He directed the applicant be reduced to the lowest enlisted grade and the issuance of an Under Other Than Honorable Conditions Discharge Certificate.

8. The applicant was discharged accordingly on 29 January 1979, under the provisions of AR 635-200, Chapter 10, in the grade of E-1. His DD Form 214 confirms his service was characterized as under conditions other than honorable. He was credited with 1 year, 11 months, and 8 days of net active service this period.

9. Administrative separations under the provisions of Army Regulation 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial. An under conditions other than honorable character of service is normally considered appropriate.

10. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. 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.

2. A majority of the Board found the applicant's statement compelling in support of clemency and found the character of service he received to be too harsh considering the nature of his misconduct. A majority of the Board determined the applicant's character of service should be changed to honorable. Because the basis for his reduction to the lowest enlisted grade was his original character of service, this correction will entail restoration of his rank/grade.

3. The member in the minority found insufficient evidence of in-service mitigating factors and noted 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 member in the minority 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 Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show his character of service as honorable and to show his rank/grade as PFC/E-3 with a date of rank of 1 November 1977.

11/1/2024

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. 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, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under conditions other than honorable is normally considered appropriate.

b. 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.

c. 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.

3. 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 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, Boards 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//