

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 June 2024

DOCKET NUMBER: AR20230011863

APPLICANT REQUESTS: reconsideration of his previous request to upgrade 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)
- National Personnel Records Center letter

FACTS:

1. Incorporated herein by reference are military records, as were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20120010973, on 18 December 2012.
2. The applicant states he would like the Board to upgrade his character of service because he feels the Army wrongly discharged him. He adds, "I know without a doubt it was the wrong way for me to have been discharged after all this time still today."
3. A review of the applicant's service record reveals the following:
 - a. On 23 August 1977, the applicant enlisted into the Regular Army for 3 years; he was 20 years old. Upon completion of initial entry training and the award of military occupational specialty 13B (Cannon Crewman), orders transferred him to Germany and he arrived in country, on 5 December 1977; effective 8 December 1977, orders further assigned him to a field artillery battalion.
 - b. On or about 4 May 1978, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for having been absent without leave (AWOL), from 17 to 25 April 1978 (8 days).
 - c. On or about 3 March 1979, the applicant accepted NJP because he failed to report on time for his unit's physical training formation.

d. On 29 April 1980, the applicant immediately reenlisted for 3 years. On 2 October 1980, Permanent Orders awarded him the Army Good Conduct Medal (1st Award). Effective 1 February 1981, his chain of command promoted him to sergeant (SGT)/E-5.

e. In or around January 1982, and again in April 1982, the applicant received evaluations on DA Forms 2166-6 (Enlisted Evaluation Report), covering the respective rating periods of 197908 through 198201 and 198202 through 198204. Both reports indicated the applicant had done a superior job while assigned to various positions within the battery.

f. On 4 May 1982, the applicant accepted NJP for missing movement. On 26 May 1982, the applicant completed his tour in Germany, and orders reassigned him to a field artillery battalion at Fort Riley, KS; he arrived, on or about 25 June 1982.

g. On 23 August 1982, the applicant successfully completed the Basic Noncommissioned Officer Course (BNCOC). On 22 November 1982, the applicant's battalion commander approved promotion board proceedings that recommended the applicant's secondary zone promotion to staff sergeant (SSG)/E-6; (the secondary zone is comprised of Soldiers who are recommended for promotion ahead of their peers of the same seniority).

h. On 20 January 1983, the applicant's unit reported him as AWOL, and, on 19 February 1983, the unit dropped him from its rolls.

i. On 28 March 1983, after a 67-day absence, the applicant returned to military control at Fort Dix, NJ, and orders subsequently reassigned him to the U.S. Army Personnel Control Facility (PCF) at Fort Dix. On 31 March 1983, the PCF placed the applicant on indefinite excess leave, and he departed Fort Dix.

j. The applicant's separation packet is unavailable for review; however, his service record includes his DD Form 214, which shows that, on 29 April 1983, the Army discharged him under other than honorable conditions. The DD Form 214 additionally reflects the following:

(1) Items 4a (Grade, Rate, or Rank) and 4b (Pay Grade) – Private (PV1)/E-1

(2) Item 12 (Record of Service):

- Item 12a (Date Entered AD (active duty) This Period) – 29 April 1980
- Item 12c (Net Active Service This Period) – 2 years, 9 months, and 23 days
- Item 12h (Effective Date of Pay Grade) – 16 April 1983

(3) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized): Army Service Ribbon.

(4) Item 18 (Remarks) – There is no entry showing Continuous Honorable Service from 19770823 to 19800428.

(6) Special Additional Information:

- Item 25 (Separation Authority) – Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10 (Discharge for the Good of the Service)
- Item 26 (Separation Code (SPD)) – "KFS (JFS)"
- Item 27 (Reentry (RE) Code) – RE-3; RE-3B
- Item 28 (Narrative Reason for Separation) – For the Good of the Service – In Lieu of Court-Martial
- Item 29 (Dates of Time Lost During this Period) – 19830120 to 19830327

k. On 14 May 2012, the applicant petitioned the ABCMR, requesting an upgraded character of service.

(1) The applicant maintained that he had requested an extension to his leave, but the command denied his request; additionally, he pointed out that he was young at the time, but that he was nonetheless an excellent Soldier. In support of his request, he submitted three letters of support from his wife, daughter, and pastor; all affirmed the applicant to be a good man who worked hard to provide for his family and actively participated in his church.

(2) On 18 December 2012, the Board voted to deny relief. The Board noted the absence of the applicant's separation packet, but stated the applicant's record included his DD Form 214, which reflected the basis for his separation; the Board presumed the DD Form 214 accurately reflected the applicant's overall record of service. Additionally, while the applicant had indicated he was young when the Army separated him, his service record showed he was 20 when he enlisted and 25 when he went AWOL. "Based on his record of indiscipline his service clearly does not meet the standards of acceptable conduct and performance of duty for Army personnel."

5. AR 15-185 (ABCMR) states the ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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

a. The applicant's separation packet is not available for review. However, his DD Form 214 shows he was discharged under the provisions of chapter 10 (in lieu of trial by court-martial) of AR 635-200 and he received an under other than honorable conditions discharge. The absence of the applicant's separation packet means the Board is unable to determine the complete circumstances that led to his discharge; however, given the availability of the applicant's record copy DD Form 214, which lists the applicant's regulatory separation authority, the Board presumes the applicant's leadership completed his separation properly. Since an under other than honorable conditions discharge is the appropriate character of service for enlisted Soldiers who request a voluntary discharge under chapter 10 of AR 635-200, the Board found no error or injustice in his available separation processing.

b. However, the Board also noted that the applicant completed a total of 5 years and 5 months of service. He completed an overseas tour in Germany, was recommended for promotion to E-6, and received evaluation reports indicating he had done a superior job while assigned to various positions within the battery. In view of the circumstances, and after thoroughly reviewing his case, the Board determined that while his service did not rise to the level required for an honorable characterization (given his lost time); 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:

Mbr 1 Mbr 2 Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

In addition to the correction addressed in Administrative Note(s) below, The Board determined the evidence presented is sufficient to warrant amendment of the ABCMR's decision in Docket Number AR20120010973, dated 18 December 2012. 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 29 April 1983, 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

_____ ■

_____ ■ _____

_____ ■

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.

ADMINISTRATIVE NOTE(S):

1. AR 635-5 (Separation Documents), in effect at the time, stated:

a. Item 12a (Date Entered AD This Period). Enter the date of the first day of the last immediate reenlistment for which a DD Form 214 was not issued.

b. Item 12c (Net Active Service This Period). All service entered will be less time lost under Title 10 (Armed Forces), United States Code (USC), section 972 (Enlisted Members: Required to Make Up Time Lost). Enter the total time between dates entered in items 12a and b (Separation Date This Period).

c. Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized). List all authorized awards/decorations for all periods of service.

d. Although not required at the time of the applicant's separation, later versions of AR 635-5 added the requirement to include the following comment in item 18 (Remarks) for Soldiers separated with less than an honorable character of service:
"CONTINUOUS HONORABLE SERVICE FROM (first day of service not listed on the DD Form 214) TO (date before commencement of current enlistment)."

2. AR 600-8-22 (Military Awards), currently in effect, states:

a. Effective 10 April 1981, the Noncommissioned Officer (NCO) Professional Development Ribbon is awarded to Active Army, Army National Guard, and U.S. Army Reserve Soldiers for successful completion of designated NCO professional development courses. A service member will be awarded the NPDR with the numeral which identifies the highest level of NCOES successfully completed as follows:

- Ribbon only for completion of the Primary Leadership Development Course
- Numeral "2" for Basic NCO Course
- Numeral "3" for Advanced NCO Course
- Numeral "4" Master Leaders Course
- Numeral "5" Sergeants Major Course
- Numeral "6" Nominative Leaders Course

b. Effective 1 August 1981, all members of the Active Army, Army National Guard, and Army Reserve in an active Reserve status are eligible for the award for successful completion of overseas tours.

3. The record shows items 12a and 12c through 12f are inaccurate. The applicant initially entered active duty, on 23 August 1977; immediately reenlisted, on 29 April

1980; and was separated on 29 April 1983; he incurred lost time for two periods: 19780417 through 19780424 (8 days) and 19830120 through 19830327 (67 days). Additionally, the applicant's DD Form 214 is missing his foreign service and his awards.

a. Calculation of applicant's active duty service and lost time:

Enlistment	Separation	Years	Months	Day	Total Days	Minus Lost Time	Adjusted Days
19770823	19830429	5	8	7	2076	8 days+67 days=75	2001
2001 days equals		5	5	22			

b. The applicant successfully completed his overseas tour in Germany (DA Form 2-1 contains a Yes under NTC (Normal Tour Completion)); the period of 19771205 to 19820526 equates to 4 years, 5 months, and 22 days.

c. Applicant's awards:

- PO awarded the applicant the Army Good Conduct Medal (1st Award)
- He successfully completed his overseas tour in Germany
- He graduated from BNCOC

3. As a result, amend the applicant's DD Form 214, ending 29 April 1983, as follows:

a. Delete the current entries in items 12a and 12c through 12f and replace as follows:

- 12a: "77/08/23"
- 12c: "05/05/22"
- 12d: "00/00/00"
- 12e: "00/00/00"
- 12f: "04/05/22"

b. Add the following in item 13: Army Good Conduct Medal (1st Award); NCO Professional Development Ribbon with Numeral "2"; Overseas Service Ribbon.

c. Add the following comment to item 18 (Remarks): "CONTINUOUS HONORABLE SERVICE FROM 19770823 to 19800428."

d. Add the following to item 29 (Dates of Time Lost During This Period): "19780417-19780424"

REFERENCES:

1. Army Regulation 635-200, in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable character of service represented a separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when a Soldier's subsequent honest and faithful service, over a greater period, outweighed any disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 5-3 (Secretarial Authority). The separation of enlisted personnel was the prerogative of the Secretary of the Army and was to be based on the Secretary's determination that separation was in the best interests of the Army. Soldiers being separated for the convenience of the Government could receive a character of service of honorable; under honorable conditions; or uncharacterized, if in entry-level status.

d. Chapter 10 applied to Soldiers who had committed an offense or offenses for which the punishment under the UCMJ included a punitive (i.e., bad conduct or dishonorable) discharge.

(1) Soldiers could voluntarily request discharge once charges had been preferred; commanders were responsible for ensuring such requests were personal decisions, made without coercion, and following being granted access to counsel. Commanders were to give the Soldier a reasonable amount of time to consult with counsel prior to making his/her decision.

(2) The Soldier made his/her request in writing, which certified he/she had been counseled, understood his/her rights, could receive an under other than honorable conditions character of service, and recognized the adverse nature of such a character of service. Consulting counsel was to sign the request as a witness.

2. The Manual for Courts-Martial, in effect at the time, showed punitive discharges were among the maximum punishments for violations of Article 86 (AWOL for more than 30 days).
3. AR 600-200 (Enlisted Personnel Management System), in effect at the time, prescribed policies and procedures for enlisted promotions and reductions. Paragraph 8-11 (Approved for Discharge from Service Under Other than Honorable Conditions). Commanders were required to reduce Soldiers discharged under other than honorable conditions to the lowest enlisted grade. Earlier versions of the regulation placed the foregoing provision in paragraph 7-64c (Reasons for Reduction – Approved for Discharge from Service under Other Than Honorable Conditions).
4. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in item 28 (Narrative Reason for Separation).
5. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with chapter 10, AR 635-200 were to receive an SPD of "KFS" and have, "For the Good of the Service – In Lieu of Court-Martial" entered in item 28 of their DD Form 214.
6. AR 15-185, currently in effect, states:
 - a. The ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, the ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).
 - b. The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.
8. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 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//