

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2024

DOCKET NUMBER: AR20230011875

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions (general) to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 26 July 2023

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's daughter states, in effect, when her father was discharged, he was never given a chance to overturn his discharge or defend his side. He has told her multiple stories, which were discriminatory against him and believes these practices led to his discharge.
3. The applicant enlisted in the Regular Army on 12 September 1978, for a period of 3 years. He extended his enlistment on 12 August 1980 to complete an overseas tour with dependents. He conducted an immediate reenlistment on 14 September 1981 for an additional 6 year period.
4. His DA Form 2-1 (Personnel Qualification Record) shows he was awarded the military occupational specialty of 11B (Infantryman) and the highest rank he attained was specialist four/E-4.
5. On 10 December 1982, the applicant accepted nonjudicial punishment under the provisions of Article 15, of the Uniform Code of Military Justice, for failing to go to his prescribed appointed place of duty, the Motor Pool, and willfully disobeying a lawful order from his superior noncommissioned officer, on or about 7 December 1982. His

punishment consisted of reduction to private first class/E-3, forfeiture of \$177.00, and extra duty for 14 days.

6. Two DA Forms 4856-R (General Counseling Forms) show the applicant was counseled on 20 December 1982 for missing a formation and counseled on 27 December 1982 for missing first formation and falling out of a physical training run.

7. The applicant's commander notified him of the intent to initiate administrative separation action under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13 (Unsatisfactory Performance). Specifically stating the reasoning for his proposed action were the applicant's inability to adapt to the Army as demonstrated by his poor duty performance.

8. On 30 December 1982, the applicant's commander formally recommended him for discharge under the provisions of AR 635-200, Chapter 13. Additionally adding a statement addressing the applicant. Stating, in effect, during December 1982, the applicant received NJP for failure to report to guard duty. This was a serious offense which was an indicator of his poor attitude. Several other incidents involving his failure to report for duty in a timely manner also surfaced. His duty performance has been entirely unsatisfactory, and he has had debt problems resulting in his eviction from a local apartment complex.

9. On 5 January 1983, the applicant acknowledged he was advised by consulting counsel of the basis for the contemplated action to separate him for unsuitability under AR 635-200, Chapter 13, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights.

a. He waived consideration, a personal appearance, and consulting counsel before a Board of officers.

b. He elected to not submit a statement in his own behalf. Additionally, he acknowledged understanding that he may expect to encounter substantial prejudice in civilian life if a under honorable conditions (general) discharge was issued to him. He further understood that, as the result of the issuance of a discharge under other than honorable conditions, he may be ineligible for many or all benefits as a Veteran under both Federal and State laws and that he may expect to encounter substantial prejudice in civilian life.

10. On 13 January 1983, the separation authority approved the recommendation for discharge under the provisions of AR 635-200, Chapter 13, waived the counseling and rehabilitative requirement, and directed the issuance of a General Discharge Certificate.

11. The applicant was discharged on 24 January 1983, under the provisions of AR 635-200, Chapter 13, by reason of unsatisfactory performance, in the grade of E-3. His DD Form 214 confirms his service was characterized as under honorable conditions (general), with separation code JHJ (JKJ) and reenlistment code of RE-3 and 3C. He was credited with 4 years, 4 months, and 13 days of net active service. He was awarded the Army Good Conduct Medal.

12. Email correspondence from the Constituent Service Director, for Congresswoman D____ of Colorado shows the applicant's daughter sought the assistance of the applicant's Congressional Representative in submitting his application to the Board.

13. Soldiers may be separated under the provision of AR 635-200, Chapter 13, when it is determined that they are unqualified for further military service due to unsatisfactory performance.

14. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence of record shows the applicant's chain of command recommended his separation due to his unsatisfactory performance (inability to adapt to the Army as demonstrated by his poor duty performance, poor attitude, failure to report for duty in a timely manner, and debt problems). He received a general 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. However, the Board noted that his misconduct was of a minor nature considering his 4 years and 4 months of service. Given his minor offenses, his reenlistment, and his total service, the Board determined an honorable 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

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:	:	:	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 amending the applicant a DD Form 214 for the period ending 24 January 1983, as follows:

- Character of Service: Honorable
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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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. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 13 of this regulation provides for separation due to unsatisfactory performance when, in the commander's judgment, the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.

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//