

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 18 June 2024

DOCKET NUMBER: AR20230012367

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) characterization of service to honorable, and a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty),
29 August 1986

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 a government job with a government contractor and asks the Board for relief.
3. The applicant enlisted in the Regular Army on 5 July 1984, for 3 years. The highest rank/grade he held was private first class/E-3.
4. The applicant received general counseling on seven occasions between 1 May 1985 and 8 May 1986 for:
 - missing formation
 - missing formation, unsecured wall locker, and failing to follow instructions
 - overall performance as a soldier
 - not being ready for inspection
 - failing to be at formation, being out of uniform and failing to secure his wall locker
 - failing to follow orders from his noncommissioned officer
 - failing to follow a lawful order from his noncommissioned officer and failing to comply with training standards

5. The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice, on three occasions:

a. On 24 September 1985, for disobeying a lawful order on or about 22 September 1985. His punishment included restriction and extra duty for 14 days.

b. On 18 March 1986, for wrongfully and falsely altering an individual sick slip on or about 5 March 1986. His punishment included reduction to private/E-2 (suspended to be automatically remitted if not vacated before 18 June 1986), restriction and extra duty for 14 days, and forfeiture of \$167.00 pay for one month.

c. On 7 July 1986, for failing to go at the time prescribed to his appointed place of duty on or about 20 June 1986. His punishment included reduction to private/E-2, forfeiture of \$167.00 pay for one month, and restriction and extra duty for 14 days.

6. On 5 August 1986, the applicant's commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Chapter 13, for unsatisfactory performance. The applicant acknowledged receipt of his commander's notification on the same date.

7. The applicant consulted with counsel on 6 August 1986 and was advised of the reason for separation and the rights available to him. He understood if he was issued a general discharge, he may encounter substantial prejudice in civilian life. He did not submit a statement in his own behalf.

8. The applicant's chain of command recommended the applicant's separation from the service, under the provisions of Army Regulation 635-200, Chapter 13.

a. As reasons for the proposed action, his immediate commander cited the applicant's disruptive influence in the unit and the likeliness that his behavior would continue in the same fashion. Additionally, he noted the applicant did not possess the necessary qualities to further develop as a soldier or participate in training and the mission of the unit.

b. The applicant's medical examination and mental status evaluation are not available in his record for review; however, the immediate commander's recommendation memorandum indicates that both were included as enclosure five.

9. On 12 August 1986, the separation authority approved the recommended discharge and directed the issuance of a General Discharge Certificate.

10. The applicant was discharged accordingly on 29 August 1986, under the provisions of Army Regulation 635-200, Chapter 13, for unsatisfactory performance, with an under honorable conditions (General) characterization of service in the grade of E-2. He received a separation code of "JHJ" and a reenlistment code of "RE-3." He was credited with 2 years, 1 month, and 25 days of net active service during the period covered.

11. Regulatory guidance in effect at the time provided the service of Soldiers separated due to unsatisfactory performance would be characterized as honorable or under honorable conditions as warranted by their military record.

12. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The Board determined 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.

2. 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, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was discharged from active duty due to unsatisfactory performance following his repeated counseling, disruptive influence in the unit, the likeliness that his behavior would continue in the same fashion, and his lack of necessary qualities to further develop as a soldier or participate in training and the mission of the unit. He received an under honorable conditions (general) discharge. The Board found no error or injustice in his separation processing. The applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

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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. Army Regulation 15-185 (ABCMR) states 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 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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

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.

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/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 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//