

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 3 July 2024

DOCKET NUMBER: AR20230012380

APPLICANT REQUESTS: an upgrade of his general, under honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 is sixty years old, and he is having health problems with his hearing, feet, shoulder, eyes, knees, and he feels that he was never been deprogrammed. He believes he is going through something and he needs help.

3. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 22 January 1981.

b. On 17 November 1982, he accepted nonjudicial punishment for one specification of failure to obey a lawful order, and wrongfully use provoking words.

c. On 3 December 1982, he accepted nonjudicial punishment for failure to be at his appointed place of duty on or about 21 November 1982.

d. On 18 January 1983, he accepted nonjudicial punishment for failure to be at his appointed place of duty on or about 10 January 1983. His punishment included reduction to private (PVT)/E-1.

e. On 19 January 1983, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) Chapter 13, for unsatisfactory performance. The specific reasons for his proposed recommendation were based on the applicant's job performance and conduct failed to meet the standards required to be a productive member of the United States Army. The applicant knowledge the receipt of this notification on 20 January 1983.

f. On 20 January 1983, after consulting with legal counsel, he 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 other than honorable conditions is issued to him
- he may be ineligible for many or all benefits as a Veteran under both Federal and State laws
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he is ineligible to apply for enlistment in the U.S. Army for a period of two years after discharge

g. The applicant underwent a medical examination on 24 January 1983 for the purpose of separation which indicated he was generally in good health. The applicant was marked qualified for service and separation.

- Standard Form (SF) 88 (Report of Medical Examination) dated 24 January 1983
- SF 93 (Report of Medical History) dated 24 January 1983

h. On 3 February 1983, the applicant underwent a mental evaluation. The DA Form 3822-R (Report of Mental Status) shows he was mentally responsible for his behavior and possessed sufficient mental capacity to understand and participate in any administrative or judicial proceedings in which he is involved. He was for any administrative action deemed appropriate by the Command, to include discharge under the provision of AR 635-200.

i. On 8 February 1983, the immediate commander-initiated separation action against the applicant under the provisions of AR 635-200, Chapter 13, for unsatisfactory performance. The commander recommended a general, under honorable conditions discharge. The intermediate commander recommended approval.

j. On 28 February 1983, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for separation under

the provisions of AR 635-200, Chapter 13, for unsatisfactory performance. He would be issued a general, under honorable conditions characterization of service.

k. The available service records are void of the intermediate commander recommended.

l. On 7 March 1983, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 shows he completed 1 year, 5 months, and 29 days of active service with no lost time. He was assigned separation code JKJ and the narrative reason for separation listed as "Unsatisfactory Performance," with reentry code 3. It also shows he was awarded or authorized:

- Army Service Ribbon
- Marksman Badge (Rifle -M16A1)
- 1st Class (Hand Grenade)

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

5. By regulation, action will be taken to separate a Soldier for per this chapter when it is determined that he or she is unqualified for further military service because of unsatisfactory performance.

6. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

#### 7. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 7 March 1983 under honorable conditions (general) discharge.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of service under consideration

shows he entered the regular Army on 9 September 1981 and was discharged on 7 March 1983 under the provisions provided in chapter 13 of AR 635-200, Personnel Management – Enlisted Personnel (1 October 1982): Separation for Unsatisfactory Performance.

d. The applicant received a general discharge.

e. Because of the period of service under consideration, there are no encounters in AHLTA or documents in iPERMS.

f. The applicant's pre-separation Chapter 13 physical examination was completed on 24 January 1983. No medical history was documented on the Report of Medical History. On the accompanying Report of Medical Examination, the provider documented a normal examination, listed no defects for diagnoses, and found the applicant qualified for separation under chapter 13 of AR 635-200.

g. The applicant underwent a pre-separation Mental Status Evaluation on 3 February 1983. The provider documented a normal examination, that the applicant was mentally responsible, able to distinguish right from wrong and adhere to the right, had the mental capacity to participate in board proceedings, met the medical retention standards of AR 40-501 (Standards of Medical Fitness), demonstrated "no significant psychopathology which warrants disposition through medical channels," and was cleared for administrative action as deemed appropriated by command.

h. JLV shows he receives humanitarian care as a non-veteran and was diagnosed with adjustment reaction not otherwise specified in 2008. There are no clinical encounters.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

#### 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency

determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising official finding insufficient evidence that supports the applicant's contentions for an upgrade to honorable. The opine noted the applicant was cleared for administrative action as deemed appropriated by command. The applicant provided no post service achievements or character letters of support for the Board consideration.

2. The Board found the applicant's service record exhibits numerous instances of unsatisfactory job performance and conduct. Evidence shows he failed to meet the standards required to be a productive member of the United States Army. The applicant completed 1 year, 5 months, and 29 days of active service with no lost time. He was discharged for unsatisfactory performance and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Therefore, the Board denied relief.

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] [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.
  - a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 13 of the regulation states action will be taken to separate a Soldier for per this chapter when it is determined that he or she is unqualified for further military service because of unsatisfactory performance. Paragraph 13-2, the seriousness of the circumstances is such that the member's retention would have an adverse impact on military discipline, good order, and morale.

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.

4. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by

ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//