

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2024

DOCKET NUMBER: AR20230012493

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable.

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

DD Form 149 (Application for Correction of Military Record)

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 was told he would receive an honorable discharge. He was young and believed what he was told by his superiors. He was an 18-year old kid and feels he was misinformed. He doesn't think he deserved this type of discharge.
3. On 20 October 1975, the applicant enlisted in the Regular Army for 3 years. Upon completion of training, he was awarded military occupational specialty 12B (Combat Engineer). The highest grade he attained was E-2.
4. On 26 January 1976, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for stealing a gold colored key chain from the main post exchange, on or about 11 January 1976. His punishment included forfeiture of \$70.00 for two months.
5. The applicant received formal counseling on 6 April 1976, for his attitude.
6. On 26 May 1976, the applicant accepted NJP under Article 15 of the UCMJ, for disrespecting his superior commissioned officer, on or about 13 May 1976. His punishment included forfeiture of \$70.00.

7. The applicant received additional counseling on 25 June 1976, for speeding in a military vehicle.
8. On 15 July 1976, the applicant accepted NJP under Article 15 of the UCMJ, for disobeying a lawful order from his superior noncommissioned officer, on or about 8 July 1976. His punishment included forfeiture of \$90.00, and seven days extra duty.
9. On 28 September 1976, the applicant accepted NJP under Article 15 of the UCMJ, for sleeping on guard duty, on or about 25 September 1976. His punishment included reduction to E-1, and ten days extra duty.
10. On 8 December 1976, the applicant accepted NJP under Article 15 of the UCMJ, for sleeping on guard duty, on or about 12 November 1976. His punishment included forfeiture of \$50.00, and 14 days extra duty.
11. The applicant received additional counseling on the following dates/for:
 - 28 December 1976; various acts of misconduct, job performance
 - 17 January 1977; returning late from leave
12. On 3 February 1977, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
13. On 3 February 1977, the applicant accepted NJP under Article 15 of the UCMJ, for disrespecting his superior noncommissioned officer, on or about 1 February 1977; and being drunk and disorderly, on or about 1 February 1977. His punishment included forfeiture of \$80.00 for one month, and 14 days restriction and extra duty.
14. The applicant's commander notified the applicant on 27 February 1977, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13, paragraph 13-5a(1), for frequent incidents of a discreditable nature with civil or military authorities.
15. On 1 March 1977, the applicant acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him. He requested representation by counsel before a board of officers. He requested representation by counsel. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him. He acknowledged he understood that, as the result of issuance of an UOTHC, he may be ineligible for many or all benefits as a Veteran under both Federal and State laws. He submitted a statement in his own behalf; however, the available record is void of the letter.

16. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 13. As the specific reasons, the commander noted his demonstrated unwillingness to perform as a Soldier and his total lack of initiative throughout his tour of duty with the unit. Repeated counseling has failed to improve his attitude and performance. The applicant demonstrated unwillingness to perform as soldier. He totally lacked initiative throughout his tour of duty with this this unit. His disregard for authority and poor duty performance have placed an undue burden upon the chain of command. He seemed to have no desire to improve even after being given all reasonable opportunities to improve his performance, appearance, and attitude. His continued presence was prejudicial to the morale and discipline and is a waste of money.

17. On 27 March 1977, the applicant accepted NJP under Article 15 of the UCMJ, for wrongfully having marijuana in his possession, on or about 7 February 1977. His punishment included forfeiture of \$187.20 for two months, and 30 days restriction and 45 days extra duty.

18. The applicant's record is void of the separation authority's approval of the recommended separation action.

19. The applicant was discharged on 29 March 1977. His DD Form 214 (Report of Separation from Active Duty) confirms his service was characterized as UOTHC. He completed 1 year, 5 months, and 10 days of net active service this period with nine days of lost time.

20. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

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 applicant exhibited a pattern of misconduct - frequent incidents of a discreditable nature with civil or military authorities, as evidenced by his multiple NJPs and his commander's assessment of his poor performance and negative attitude. As a result, his chain of command initiated separation action against him. He was discharged with an under other than honorable conditions character of service, completing 1 year and 5 months of active service. The Board found no error or injustice in the separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Therefore, 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 635-200 sets forth the requirements for the administrative separation of enlisted personnel. The version in effect at the time provided that:

a. 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.

b. 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.

c. Chapter 13 provided procedures and guidance for eliminating personnel found to be unfit or unsuitable for further military service. Action will be taken to separate an individual for unfitness when it is clearly established that despite attempts to rehabilitate or develop him as a satisfactory Soldier, further effort is unlikely to succeed. Action will be taken to separate an individual for unsuitability when it is clearly established that it is unlikely that he will develop sufficiently to participate in further military training and/or become a satisfactory Soldier.

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.

//NOTHING FOLLOWS//