

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 May 2024

DOCKET NUMBER: AR20230012641

APPLICANT REQUESTS: reconsideration of his prior request for an upgrade of his under other than honorable conditions discharge.

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

- Self-Authored Statement
- Department of Veterans Affairs (VA) Form 21-22 (Appointment of Veterans Service Organization (VSO) as Claimant's Representative)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20220006398 on 9 March 2023.

2. The applicant provides VA Form 21-22, dated 2 August 2023, which appoints a VSO as his representative.

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

a. He enlisted in the Arkansas Army National Guard (ARARNG) on 9 November 1978.

b. He entered active duty on 10 January 1979. His DD Form 214 (Report of Separation from Active Duty) shows he was honorably released from active duty training on 28 April 1979. He was awarded military occupational specialty 36C, Wire Systems Installer. He completed 3 months and 19 days of active service.

c. Orders 208-144, dated 25 October 1979, ordered the applicant to involuntary active duty for a period of 19 months and 26 days with a report date of 10 January 1980.

d. He accepted nonjudicial punishment on 15 September 1980 for one specification of failure to go to his appointed place of duty on or about 23 August 1980.

e. A DD Form 458 (Charge Sheet) shows on 15 September 1980, court-martial charges were preferred on the applicant for the following:

- three specifications of failure to go to his appointed place of duty
- four specifications of being disrespectful in language and deportment
- one specification of failure to obey a lawful order from a superior commissioned officer

f. On 10 October 1980, after consulting with legal counsel, he requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration
- he may be deprived of his rights and benefits as a Veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life

g. On 30 October 1980, the separation authority approved the applicant's request for discharge for the good of the service under the provisions of AR 635-200, Chapter 10. He would be separated with an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted grade.

h. A DA Form 3822-R (Report of Mental Status Evaluation) shows the applicant underwent a mental evaluation on 7 November 1980 which indicated he was mentally responsible and had the mental capacity to understand and participate in the proceedings.

i. On 19 November 1980, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 10 months and 10 days of active service. He was assigned separation code JFS and the narrative reason for separation listed as "Administrative Discharge – Conduct Triable by a Court-Martial," with reentry code 3.

5. On 9 March 2023, the ABCMR rendered a decision in Docket Number AR20220006398. The Board noted the applicant failed to provide evidence of post-service achievements or letters of reference in support of a clemency determination.

The Board concurred with the medical advisory official regarding his misconduct not being mitigated by his mental health condition. The Board determined the character of service the applicant received upon separation was not in error or unjust.

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

7. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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

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 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 and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with three specifications of failure to go to his appointed place of duty, four specifications of being disrespectful in language and deportment, and one specification of failure to obey a lawful order from a superior commissioned officer, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board majority found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board minority found that a significant amount of time had elapsed and the applicant's misconduct was minor and voted to upgrade his discharge to under honorable conditions (General). The Board majority concluded that the characterization of service the applicant received upon separation was appropriate.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

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 amendment of the ABCMR decision rendered in Docket Number AR20220006398 on 9 March 2023.



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. 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. Paragraph 1-9d (Honorable Discharge) states an honorable discharge is a separation with honor. Issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty during the member's current enlistment of current period of service with due consideration for the member's age, length of service, grade, and general aptitude.

b. Paragraph 1-9e (General Discharge) states a general discharge is a separation from the Army under honorable conditions of an individual whose military record is not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

2. 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.

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.

//NOTHING FOLLOWS//