

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 July 2024

DOCKET NUMBER: AR20230012898

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge.

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), for the period ending 17 October 1983

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 feels his discharge was unjust since he was only several weeks away from his normal expiration term of service (ETS) date. He was never subject to any judicial proceedings. Furthermore, he was awarded the good conduct medal for exemplary conduct for his period of service from 23 November 1979 to 22 November 1982.

3. The applicant enlisted in the Regular Army on 23 November 1979.

4. The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on four occasions:

a. On 18 December 1981, for having an unauthorized DD Form 345 (Armed Forces Liberty Pass) in his possession, which he knew was unauthorized, on or about 15 December 1981. His punishment included reduction to private first class (PFC)/E-3. Upon appeal, the portion of the punishment pertaining to reduction to PFC/E-3 was set aside.

b. On 18 June 1982, for having an unauthorized DD Form 345 and disobeying a lawful order, on or about 8 June 1982. His punishment included reduction to the grade of E-3. The applicant's appeal of his punishment was denied.

c. On 22 July 1983, for failing to go at the time prescribed to his appointed place of duty, on or about 2 July 1983. His punishment included reduction to the grade of E-3.

d. On 1 September 1983, for disobeying a lawful order, on or about 22 August 1983 and failing to go at the time prescribed to his appointed place of duty, on or about 29 August 1983. His punishment included reduction to the grade of E-2.

5. The applicant's commander notified him on 4 October 1983 of his intent to initiate administrative separation action under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13, by reason of unsatisfactory performance. As reasons for the separation action, the commander noted the applicant's disregard for his superior officers and noncommissioned officers, his gross apathetic attitude towards military service, and all attempts at rehabilitating him were met with negative results.

6. On that same date, the applicant acknowledged receipt of the notification, He was advised by consulting counsel of the basis for the contemplated action to separate him for unsatisfactory performance 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. He acknowledged understanding that he may expect to encounter substantial prejudice in civilian life if an 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. He elected to submit a statement in his own behalf however his record is void of this statement.

7. The separation authority approved the recommended discharge under the provisions of AR 635-200, Chapter 13, on 6 October 1983, further waiving the rehabilitative transfer requirement, and directing the issuance of a DD Form 257A (General Discharge Certificate).

8. The applicant was discharged on 17 October 1983, under the provisions of AR 635-200, Chapter 13, by reason of unsatisfactory performance. His DD Form 214 confirms his service was characterized as under honorable conditions (General), with separation code JHJ and reenlistment code RE-3, 3C. He was credited with 3 years, 10 months, and 25 days of active service. He was authorized or awarded the following:

- Army Good Conduct Medal
- Overseas Service Ribbon
- Army Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M16)

9. 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 because of unsatisfactory performance.

10. 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:

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 and available military records, the Board found no error or injustice existed to warrant an upgrade to honorable. The applicant provided no evidence of post-service achievements or letters in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the characterization of service the applicant received upon separation was not in error or unjust.

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 accepted nonjudicial punishment on several occasions and was discharged for unsatisfactory performance. 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 characterization of service. 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.

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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, USC, 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//