

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 16 July 2024

DOCKET NUMBER: AR20230012902

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under honorable conditions (general) characterization of service.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), with self-authored statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 18 June 1987
- two statements of support

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 AR2004106844 on 11 January 2005.

2. The applicant states, in effect, he enlisted in the Army to assist his mother in keeping their family home following his parent's divorce. He got married due to his wife being pregnant with their first child. He was a young father and husband, with an even younger bride. Neither of them had the support of family to deal with military life, obtaining proper parenting skills, and adjusting to being 3,000 miles from home. He was discharged under duress. He was falsely accused of misconduct. There was no evidence of abuse. His wife's mother wanted her daughter back to collect welfare benefits.

3. The applicant enlisted in the Regular Army on 25 July 1986, for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 91A (Medical Specialist). The highest rank he attained was private/E-2.

4. A DA Form 3822-R (Report of Mental Status Evaluation), dated 15 April 1987, shows the applicant was psychiatrically cleared to participate in administrative proceedings.

5. The applicant's commander notified him on 1 June 1987 of his intent to initiate action to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13, paragraph 13-2, by reason of unsatisfactory performance. As specific reason for the separation action, the commander noted the applicant's demonstrated unsatisfactory performance, even after counseling. The commander felt the applicant would be a disruptive influence and not develop sufficiently to become a satisfactory Soldier. On that same date, the applicant was advised of his rights and acknowledged receipt of the notification.

6. On 2 June 1987, the applicant was advised by counsel of the basis for the contemplated separation action, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights.

a. He acknowledged understanding that he may expect to encounter substantial prejudice in civilian life if an under honorable conditions (general) discharge were issued to him. He further understood that, as a 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.

b. In an attached statement in his own behalf, the applicant stated, in effect, he wanted to be retained in the Army. He felt he was considered "a thorn in the side" of his unit and not worth rehabilitating. He was falsely labeled, and once you are a marked man, you are doomed. He was a responsible man with a respectable family. He needed help, but no one wanted to take the extra time to help him. In asking for help, he worried that if he made one mistake, he would face disciplinary action. He was human, and human Soldiers made mistakes.

7. The applicant's immediate commander formally recommended his separation under the provisions of AR 635-200, Chapter 13, paragraph 13-2, for unsatisfactory performance, on 4 June 1987. The commander further stated retention of the applicant would have an adverse impact on military discipline, good order, and morale.

8. On 8 June 1987, the applicant's intermediate commander concurred with the recommended separation action, further recommended the applicant's service be characterized as under honorable conditions (general) and requested a waiver of the rehabilitation requirements.

9. On 11 June 1987, the separation authority approved the recommended discharge, waived the rehabilitation requirements, and directed the issuance of a DD Form 257A (General Discharge Certificate).

10. The applicant was discharged under the provisions of AR 635-200, Chapter 13, by reason of unsatisfactory performance, on 18 June 1987. His DD Form 214 confirms his

service was characterized as under honorable conditions (general), with separation code JHJ and reentry code RE-3. He was credited with 10 months and 24 days of net active service. He was awarded or authorized the Army Service Ribbon and the Marksman Marksmanship Qualification Badge with Rifle bar (M-16).

11. The ABCMR reviewed the applicant's request for an upgrade of his characterization of service on 11 January 2005. After careful consideration, the Board determined the applicant's contention that he was young and immature at the time was not sufficiently mitigating to warrant relief. The evidence presented did not demonstrate the existence of a probable error or injustice. The Board denied his request for relief.

12. As new evidence, the applicant provides two statements of support, wherein the authors state, in effect, the applicant's negative life experience began in childhood when he was teased for being adopted. He was unaware of his true parentage. He was shocked and hurt, causing him to rebel against his parents. His parents' marriage deteriorated, bringing further shame to his family. He made shiftless, unwise decisions. He decided to better himself by enlisting in the Army. After his discharge, he realized he needed to make positive lifestyle changes. He has made great progress. He sought professional counseling, furthered his education, obtained a bachelor's degree, and is gainfully employed by the city. He is active in his church and community. Had he received guidance and counseling sooner, he would have had a productive military experience.

13. 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.

14. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination 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 evidence shows the applicant's commander determined the applicant would be a disruptive influence and not develop sufficiently to become a satisfactory Soldier. As a result, his chain of command, initiated separation action against him for unsatisfactory performance. He received a general discharge and completed 10 months and 24 days of active service. The Board found no error or injustice in his separation processing. The Board determined a general discharge is the appropriate characterization given the applicant's overall service and unsatisfactory performance. Also, 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 and reason for separation the applicant received upon separation were 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 to amend the decision of the ABCMR set forth in Docket Number AR2004106844 on 11 January 2005.

█

█

---

█

█

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. 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.

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. 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//