

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 July 2024

DOCKET NUMBER: AR20230013192

APPLICANT REQUESTS: Upgrade of his under honorable conditions (general) discharge and a change to his narrative reason for separation.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-authored letter
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 AC92-06187 on 14 July 1993.
2. The applicant states he had no problems in his first two years in the Army and he was up for promotion to sergeant. His problems began at Fort Bliss, TX, when he started having health problems which prevented him from doing some of his duties. His medical records will show that he was at sick call and not absent without leave (AWOL). His leadership wanted him out of the Army, so they made false statements to get him discharged. There is no proof of any misconduct in his military records.
3. The applicant enlisted in the Regular Army on 21 November 1979 for 3 years. Upon completion of training, he was awarded military occupational specialty 19D (Cavalry Scout). The highest grade he attained was E-4.
4. A DD Form 3349 (Medical Condition - Physical Profile Record) dated 4 June 1980, shows that the applicant was placed on a seven day temporary profile for bursitis. He was limited to no assignment requiring handling of heavy materials including weapons, no overhead work, no pullups, and no pushups.
5. A DD Form 3349, dated 8 July 1980, shows that the applicant was placed on a 14 day temporary profile for subacromial bursitis. He was limited to no assignment

requiring handling of heavy materials including weapons, no overhead work, no pullups, no pushups, no carrying of a rucksack, and no loads to his left shoulder.

6. On 18 June 1981, the applicant was reported AWOL and remained absent until he returned to military authorities on 29 June 1981.

7. On 14 July 1981, the applicant accepted non-judicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice for going AWOL and failing to go at the time prescribed to his appointed place of duty on two occasions. His punishment included forfeiture of \$140.00, and 14 days restriction and extra duty.

8. The applicant received formal counseling on 9 October 1981 for missing formation.

9. The applicant's commander notified the applicant on 18 November 1981, he was initiating actions to discharge him from the Army under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-31, Expeditious Discharge Program (EDP). As the specific reason, the commander noted the applicant lacked the attitude, motivation, and self-discipline demanded of Soldiers in the unit. He had missed numerous formations and had established a pattern of shirking. He had failed to manage his money and his personal life, which had interfered with his duties to the point where he was no longer of any service to the Army. Additionally, he lacked the initiative and drive that was expected of the newest private.

10. The applicant acknowledged receipt of the contemplated separation action. He was advised of the rights available to him and the effect of waiving his rights. He indicated he understood he could expect to encounter substantial prejudice in civilian life if an under honorable conditions (general) discharge was issued to him. He voluntarily consented to the separation. He declined to submit a statement in his own behalf.

11. The applicant's commander formally recommended the applicant's separation from service under the provisions of Army Regulation 635-200, paragraph 5-31h(2).

12. Consistent with the chain of command's recommendation, the separation authority approved the recommended action on 18 December 1981, and directed the issuance of a DD Form 257A (General Discharge Certificate).

13. The applicant was discharged on 8 January 1982. He was credited with 2 years, 1 month, and 7 days of net active service this period with 11 days of lost time. His DD Form 214 contains the following entries in:

- Item 24 (Character of Service) – Under Honorable Conditions (General)
- Item 25 (Separation Authority) – AR [Army Regulation] 635-200, paragraph 5-31h(2)

- Item 28 (Narrative Reason for Separation) – EDP, failure to maintain acceptable standards for retention

14. The applicant petitioned the Army Discharge Review Board requesting upgrade of his under honorable conditions (general) discharge. On 26 October 1982, the Board voted to deny relief and determined his discharge was both proper and equitable.

15. The applicant petitioned the ABCMR requesting upgrade of his under honorable conditions (general) discharge. On 14 July 1993, the Board voted to deny relief and determined the applicant had not presented and the records did not contain sufficient justification to conclude that would be in the interest of justice to grant the relief requested or to excuse the failure to file within the time prescribed by law.

16. 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:

The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation and the reason for his separation were not in error or unjust.

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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AC92-06187 on 14 July 1993.

X

CHAIRPERSON

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 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.
2. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed the separation code "JGH" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, for EDP, failure to maintain acceptable standards for retention.
3. Army Regulation 635-200 sets forth the basic authority for the 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. Paragraph 5-31 provided for the discharge of enlisted personnel who had completed at least six months but less than 36 months of active duty and who had

demonstrated that they could not or would not meet acceptable standards required of enlisted personnel in the Army because of the existence of one or more of the following conditions: poor attitude, lack of motivation, lack of self-discipline, inability to adapt socially or emotionally, or failure to demonstrate promotion potential. No individual would be discharged under this program unless the individual voluntarily consented to the proposed discharge. Individuals discharged under this provision of the regulation were issued either a general or honorable discharge.

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/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//