

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 August 2024

DOCKET NUMBER: AR20230013783

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge
- any awards authorized for his time in service, to include the Humanitarian Service Medal (HSM)

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 it has been 40 years since he was discharged, and he would like his discharge upgraded to honorable. He would also like his DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect all his medals and ribbons, to include the HSM which he was previously awarded, and a ribbon for his foreign service in Germany. He received a unit commendation for their second detail to guard Cuban refugees at Fort Chaffee, AR in 1982. He has been a good patriot since being discharged and he deserves an honorable discharge.
3. A review of the applicant's service records show:
 - a. He enlisted in the Regular Army on 14 October 1980.
 - b. DA Form 2-1 (Personnel Qualification Record) shows in:
 - Item 5 (Oversea Service): Europe – Germany from 6 September 1982 to 11 May 1983, 8 months
 - Item 9 (Awards, Decorations, and Campaigns): "HSML" and the Army Service Ribbon

c. On 23 September 1981, he accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ), for without authority, on or about 16 August 1981, failing to go at the time prescribed to his appointed place of duty, to wit: 0900, 3rd Battalion, 10th Infantry Guard Mount.

d. On 22 October 1982, he accepted NJP under Article 15, UCMJ, for on or about 16 October 1982, violating a lawful general regulation, by having in his possession a locking blade knife.

e. He received informal counselings for the following:

- 8 January 1983 – being absent from 0900 formation; alcohol related.
- 10 January 1983 – missing 0700 physical training (PT) formation.
- 19 January 1983 – disobeying a lawful order by going off post when his liberty pass had been pulled for 14 days by his chain of command.
- 24 January 1983 – going off post while his liberty pass was revoked and not cleaning his area of responsibility in the barracks.

f. On 10 February 1983, he accepted NJP under Article 15, UCMJ, for failing to go to the time prescribed to his appointed place of duty, to wit: 0900 hours work formation, failing to go to the time prescribed to his appointed place of duty, to wit: 0700 hours PT formation, and willfully disobeying a lawful command from his superior commissioned officer not to leave post. His punishment included reduction to private (PV1/E-1), suspended 45 days, forfeiture of 7 days of pay, restriction and extra duty for 14 days.

g. On an unspecified date, the applicant's company commander recommended a bar to reenlistment. His commander stated that the applicant was unable to adapt to military status by his failure to report at the proper time to the appointed place of duty on repeated occasions. Another relative indicator was the applicant's involvement with alcohol. He was late to formation due to alcohol abuse. His commander noted the applicant was not the quality of Soldier needed in the Army.

h. On 14 February 1983, the battalion commander approved the bar to reenlistment and stated the unit commander would ensure that a review of the bar would be performed within six months.

i. On 9 April 1983, the applicant was counseled for not making the first formation on 7 April 1983. He was still in bed when staff sergeant R_ went into his room, and when he talked to him, he noticed that he was under the influence of alcohol.

j. On 13 April 1983, he accepted NJP under Article 15, UCMJ, for on or about 7 April 1983, failing to go at the time prescribed to his appointed place of duty, to wit: 0700 hours PT formation. His punishment included reduction to private (PV1/E-1).

k. On 18 April 1983, the applicant's immediate commander notified him of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 13-2, by reason of unsatisfactory performance, and he advised the applicant of his rights.

l. On 19 April 1983, the applicant acknowledged notification of the proposed separation under the provisions of AR 635-200, chapter 13, for unsatisfactory performance, and its effects; of the rights available to him. He understood the following:

(1) He acknowledged that he was provided the opportunity to consult with legal counsel.

(2) He elected not to submit statements in his own behalf.

(3) He requested consulting counsel.

(4) He understood he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him.

(5) He understood that if he received a discharge certificate/character of service which was less than honorable, he may make application to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading; however, the act of consideration by either Board did not imply that his discharge would be upgraded.

(6) He further understood that he would be ineligible to apply for enlistment in the U.S. Army for a period of 2 years after discharge.

m. A Report of Mental Status Evaluation, dated 20 April 1983, shows the evaluating official noted the applicant had the mental capacity to understand and participate in the proceedings, and was mentally responsible.

n. On 21 April 1983, his immediate commander recommended approval of the separation under the provisions of AR 635-200, paragraph 13-2, for unsatisfactory performance. The commander requested the requirement for rehabilitation be waived because further retention on active duty would be inappropriate because the applicant was obviously resisting all rehabilitation attempts or because rehabilitation would not produce the quality Soldier desired by the Army.

o. A report of medical examination and a report of medical history were completed on 26 April 1983. It was determined that the applicant was cleared for separation.

p. On 28 April 1983, the separation authority approved the discharge, directed the applicant be issued an under honorable conditions (general) discharge, and approved the request for waiver of rehabilitative transfer and further counseling.

q. The applicant was discharged on 12 May 1983. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 13, in the rank/grade of private PV1/E-1, and his service was characterized as under honorable conditions. He completed 2 years, 6 months, and 29 days of active service. This form also shows in:

- Item 12f (Foreign Service): 8 months and 6 days
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon and the Sharpshooter Marksmanship Qualification Badge with M-16 rifle bar
- Item 26 (Separation Code): JHJ (JKJ)
- Item 27 (Reenlistment Code): RE-3

4. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge processing within that Board's 15-year statute of limitations.

5. In reaching its determination, the Board can consider the applicants 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 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 and was counseled on several occasions and

ultimately 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.

2. As it relates to the applicant's request for awards authorized, specifically the Humanitarian Service Medal, the Board determined he does not meet the criteria for award of the Humanitarian Service Medal, noting the lack of evidence for participation in a humanitarian act or operation within the designated geographical area of operation and within specified time limits.

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, 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 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 13 provided procedures and guidance for eliminating enlisted personnel determined unqualified for further military service because of unsatisfactory performance. Paragraph 13-2 states, commanders will separate a member for unsatisfactory performance when it is clearly established that:

(1) In the commander's judgment, the member will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier.

(2) The seriousness of the circumstances is such that the member's retention would have an adverse impact on military discipline, good order, and morale.

(3) It is likely that the member will be a disruptive influence in present or future duty assignments.

(4) It is likely that the circumstances forming the basis for initiation of separation proceedings will continue or recur.

(5) The ability of the member to perform duties effectively in the future, including potential for advancement or leadership, is unlikely.

(6) The member meets retention medical standards (Army Regulation 40-501).

b. An honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 13, for unsatisfactory performance would receive a separation code of "JHJ (JKJ)."

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification.
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted.
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

5. Army Regulation 600-8-22 (Military Awards), states the Humanitarian Service Medal (HSM) is awarded to members who distinguished themselves by meritorious direct participation in a Department of Defense approved significant military act or operation of a humanitarian nature. A service member must be on active duty at the time of direct participation, must have directly participated in the humanitarian act or operation within the designated geographical area of operation and within specified time limits, and must provide evidence that substantiates direct participation. The following types of military acts or operations may qualify for award of the HSM:

a. Significant assistance in the event of national or international disasters, natural or manmade, such as earthquakes, floods, typhoons, or conflagrations.

- b. Relief to a famine-stricken area.
- c. Evacuation of personnel from an area threatened by a hostile force.
- d. Support to and resettlement of refugees and evacuees.
- e. Other significant military activities directly related to humanitarian service, as designated by the DA.
- f. Acts or operations of a similar nature, as determined by the award approval authority.

6. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

- a. 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//