

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2024

DOCKET NUMBER: AR20230013784

APPLICANT REQUESTS: Reconsideration of his previous request for upgrade of his under honorable conditions (general) discharge to honorable. Additionally, he requests an appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- DD Form 214 (Report of Separation 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 AR2000050792 on 17 April 2001.

2. The applicant states:

a. For nearly three years he served his country honorably and proudly. Near the three-year mark he was supposed to be transferred from Hawaii to Fort Polk, LA, which never went through. This caused problems and his eventual premature discharge. His Veterans Affairs (VA) representative made him aware that his discharge should be changed because an injustice occurred.

b. He further states he faced racial discrimination and that impaired his ability to serve. He was called the N-word and a fight broke out between whites and blacks and the black Soldiers were up for court martial and the white Soldiers were not. His discharge was improper because the command did not follow the discharge regulations. At the time there was an experimental voluntary discharge program because of the failed Vietnam Era War. He looked into the program and was told he would be issued an honorable discharge out of the military, so he agreed.

c. He thinks he was an outstanding Soldier. He has been a good citizen since his discharge. He was able to get technical training. He tried to serve and wanted to, but

just couldn't or wasn't able to. He thought the military was trying to get him in trouble. (Full statement available for review).

3. The applicant enlisted in the Regular Army on 7 August 1972 for four years. His military occupational specialty was 11B (Light Weapons Infantryman).
4. The applicant received multiple counseling's between 5 April 1973 and 18 March 1975 for being disrespectful towards a noncommissioned officer (NCO) on four occasions, for being absent from his appointed place of duty on two occasions, for failure to go to his appointed place of duty on five occasions, and for altering official documents. He was counseled on 18 June 1974 for being a member of a company team confidence course and distinguished himself in a superior manner.
5. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on:
 - 21 March 1974, for being disrespectful in language toward an NCO and wrongfully communicating a threat to an NCO on or about 20 March 1974; his punishment consisted of reduction to private first class/E-3
 - 24 August 1974, for wrongfully and falsely altering with intent to deceive a sick call slip on or about 13 February 1974; his punishment was reduction to E-3, extra duty, and forfeiture of \$50.00 pay for one month
6. The applicant's immediate commander notified the applicant on 15 April 1975, he was initiating action to separate the applicant from the Army under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), paragraph 5-37, for failure to maintain acceptable standards for retention. He cited, as the basis for his recommendation, the applicant's lack of cooperation with peers and superiors, inability to accept instructions or directions, and his failure to demonstrate promotion potential. He recommended the applicant be furnished a General Discharge Certificate.
7. The applicant acknowledged receipt of the separation notification. He was advised of the rights available to him and the effect of a waiver of his rights. He voluntarily consented to the separation and elected not to submit a statement in his own behalf.
8. The applicant's commander formally recommended his separation from service under the provisions of AR 635-200, paragraph 5-37.
9. The separation authority approved the recommended discharge on 29 April 1975 and directed that the applicant be issued a under honorable conditions (general) discharge.

10. The applicant was discharged on 21 May 1975. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 5-37, with Separation Program Designator KMN (failure to maintain acceptable standards for retention, EDP) and Reenlistment Code 3. His service was characterized as under honorable conditions (general). He completed 2 years, 9 months, and 15 days of net active service. His awards include the National Defense Service Medal.

11. By regulation AR 635-200, Chapter 5, in effect at the time, set forth the basic authority for the separation of enlisted personnel for the convenience of the government. Separation under this chapter includes provisions for discharging Soldiers for a variety of reasons including those who fail to maintain acceptable standards for retention (EDP).

12. The previous case shows the applicant applied to the Army Discharge Review Board (ADRB) for an upgrade and change in his reason and authority for discharge. However, the ADRB was precluded from accepting his application due to its statute of limitations.

13. On 17 April 2001, the ABCMR determined the applicant failed to submit sufficient relevant evidence to demonstrate the existence of probable error injustice and denied his request.

14. In reaching its determination, the Board can consider the applicant's petition and 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 insufficient evidence of in-service mitigating factors to warrant an upgrade of the applicant's discharge from under honorable conditions (General) to honorable. The record reflects a pattern of misconduct, including four instances of disrespect toward noncommissioned officers (NCOs), two instances of failure to report to appointed place of duty, and the alteration of official documents.

2. The applicant did not submit post-service achievements or character references that could support a clemency determination. The Board noted that the applicant was discharged due to failure to maintain acceptable standards for retention under the Enlisted Developmental Program (EDP) and received a General discharge characterization accordingly. In light of the repeated infractions and absence of compelling evidence to support an upgrade, the Board determined that the existing discharge characterization appropriately reflects the applicant's service and conduct. Therefore, relief is denied.

3. 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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 AR2000050792 on 17 April 2001.


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. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

2. AR 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 5-37 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.

3. The Department of the Army began testing the Expeditious Discharge Program (EDP) in October 1973. In a message dated 8 November 1974 the Deputy Chief of Staff for Personnel announced the expansion of the EDP. The program provided for the separation of soldiers whose acceptability, performance of duty, and/or potential for continued effective service fell below the standards required for retention in the U. S. Army. Soldiers could be separated under this program when subjective evaluation of their commanders identified them as lacking qualities for continued military service because of attitude, motivation, self-discipline, inability to adapt socially or emotionally, or failure to demonstrate promotion potential.

4. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NRs) on 25 July 2018, 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 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 grounds.

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//