

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 August 2024

DOCKET NUMBER: AR20230013809

APPLICANT REQUESTS: an upgrade of his characterization of service, and a different, presumably more favorable separation code.

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), 23 October 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 19 May 1982

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, in effect, his request for a discharge upgrade is to obtain benefits.
3. The applicant enlisted in the Regular Army on 15 January 1980, for a 3-year period. He was awarded the military occupational specialty of 31M (Multi-channel Communications Equipment Operator). The highest rank he attained was private first class/E-3.
4. Before a summary court-martial at Fort Hood, Texas, adjudged on 18 December 1981, the applicant pled not guilty to, but was found guilty of wrongfully having in his possession, on or about 16 November 1981 an undetermined amount of marijuana. He was sentenced to confinement at hard labor for 30 days and forfeiture of \$367.00 for one month. The sentence was approved and ordered to be duly executed on 18 December 1981.
5. The applicant was recommended for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 5

(Separation for Convenience of the Government); however, his Commander requested the recommendation be withdrawn. Adding the applicant had responded to the Chapter recommendation as if it were a misconduct permit. He had quit the retraining program under the false assumption that he had learned of his Chapter 5 and there was nothing the chain of command could do about it. The chain of command indicated their recommendation under a Chapter 5 was not appropriate and they strongly recommended a Chapter 14 (Separation for Misconduct).

6. On 19 April 1982, the applicant's immediate commander recommended he be discharged under the provisions of AR 635-200, Chapter 14, for misconduct. Stating, he initially requested a Chapter 14 discharge for the applicant on 27 February 1982; however, after an emotional plea from the applicant, he requested retraining. The applicant's conduct and performance were acceptable, yet there was doubt about his potential and he was recommended for a Chapter 5 discharge. Following the Chapter 5 recommendation for discharge, the applicant resumed his misconduct. The Commander further recommended; he be discharged for misconduct.

7. On 20 April 1982, the applicant's intermediate commander concurred with the immediate commander's recommendation for discharge under the provisions of AR 635-200, Chapter 14. Adding, the applicant received his fourth Article 15.

8. The applicant's record is void of the facts and circumstances pertaining to his discharge; however, his DD Form 214 shows he was discharged on 19 May 1982, under the provisions of AR 635-200, paragraph 14-33b (1), by reason of frequent involvement in incidents of a discreditable nature with civil or military authorities. His service was characterized as under other than honorable conditions, with separation code JKA and reenlistment code RE-3B. He was credited with 2 years, 2 months, and 11 days of net active service this period, with time lost from 18 December 1981 to 10 January 1982. His awards include the Army Service Ribbon and two Marksmanship Qualification Badges.

9. Regulatory guidance provides when an individual is discharged under the provisions of AR 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for misconduct for frequent involvement in incidents of a discreditable nature with civil or military authorities. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. The Board carefully considered the applicant's request for amendment of his separation code from JKA; however, found no error or injustice in the separation code assigned during separation aligned with the corresponding narrative reason for separation and 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, 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. AR 635-5-1 (Separation Program Designator (SPD) Codes) states that separation codes are three-character alphabetic combinations that identify reasons for and types of separation from active duty. Separation codes and corresponding narrative reasons are aligned with applicable regulatory authority paragraphs. The regulation provides that the separation code "JKA" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, by narrative reason of "frequent involvement in incidents of a discreditable nature with civil or military authorities."

3. 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. 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.

c. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if such was merited by the Soldier's overall record.

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.

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//