

IN THE CASE OF: ██████████

BOARD DATE: 1 August 2024

DOCKET NUMBER: AR20230013952

APPLICANT REQUESTS: in effect,

- an upgrade of his already upgraded Under Honorable Conditions (General) discharge to an Honorable discharge
- to appear before the Board via video/telephone

APPLICANT'S SUPPORTING DOCUMENT CONSIDERED BY THE BOARD:

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, U.S. Code (USC), 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 he served his country during some very difficult times. While deployed, he experienced hardship which had a profound affect on him. He takes full responsibility for his actions and asks that the Board consider his service and change his characterization of service to honorable.
3. The applicant's complete military service record is not available for review. This case is being considered based upon documents provided by the applicant.
4. On 17 July 1973, the applicant enlisted in the Regular Army in the rank/grade of private (PV1)/E-1 for a period of 3 years. Upon completion of initial entry training, he was awarded military occupational specialty 76R (Missile Repair Parts Specialist) and assigned to a unit in Germany. He was advanced to the rank/grade of specialist fourth class/E-4 on 1 September 1974, the highest rank he held while serving.
5. The applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on the following dates for the offenses shown:

- 5 November 1973, for without authority, departing his appointed place of duty
- 19 December 1974, for unlawfully striking another Soldier in the face with his fist and failing to go at the time prescribed to his appointed place of duty
- 17 July 1975, for without authority, failing to go to his appointed place of duty for three accountability formations
- 13 August 1975, for without authority, absenting himself from an accountability formation
- 21 October 1975, for being derelict in the performance of his duties

6. On 18 March 1976, an administrative flag was imposed upon the applicant to prevent him from receiving any favorable personnel actions due the fact he was pending elimination from the Army under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13.

7. The applicant's immediate commander rendered a statement wherein he stated the applicant was an intelligent Soldier who had failed to meet the basic standards of military service. He had been placed under numerous supervisors in various jobs but had failed to perform adequately and required an inordinate amount of supervision. Despite the approach of his expiration of term of service, it was believed that he had not performed or met the standards of service which warranted a discharge similar to those who had served honorably.

8. The applicant underwent a pre-separation mental status examination on 22 April 1976. It was determined that he was qualified for separation proceedings.

9. On 23 April 1976, the applicant's immediate commander notified the applicant of his intent to initiate actions to separate her under the provisions of AR 635-200, Chapter 13, paragraph 13-5a(1) for unsuitability and advised him of his rights.

10. The applicant acknowledged receipt of the notification on the same date. He further acknowledged he had been advised by counsel of the basis for the contemplated action to accomplish his separation. He requested consideration of his case by a board of officers and to appear in person before them. He requested representation by appointed counsel and elected not to submit statements in his own behalf. He also acknowledged he could receive an Undesirable Discharge since he was being recommended for separation for unfitness reasons. He further understood that as a result of the issuance of an Undesirable Discharge under conditions other than honorable, he could be ineligible for many or all Veterans benefits and that he may encounter substantial prejudice in civilian life.

11. On 24 April 1976, the applicant's immediate commander formally recommend the applicant be eliminated from service before the expiration of his term of service under the provisions of AR 635-200, Chapter 13, paragraph 13-5a(1) for misconduct because

of frequent incidents of a discreditable nature with civil or military authorities. His chain of command recommended approval of his separation and that any further rehabilitative transfer action be waived.

12. On 27 May 1976, the applicant was notified to appear before a board of officers on 11 June 1976 to determine whether he should be discharged because of misconduct before the expiration of his term of service.

13. Accordingly, a board was convened on 11 June 1976 to consider the applicant's case. The board found the applicant unfit for retention in military service because of habits and traits of a character manifested by repeated commission of petty offenses. The board recommended the applicant be discharged from service because of unfitness with issuance of an Undesirable Discharge Certificate.

14. The board proceedings underwent a legal review and was determined to be legally sound.

15. On 23 June 1976, the separation authority approved the Board's recommendation, and directed the applicant be reduced to the lowest enlisted grade, and the issuance of an Undesirable Discharge Certificate.

16. On 24 June 1976, the applicant accepted NJP under the provisions of Article 15, UCMJ for without authority, failing to go at the time prescribed to his appointed place of duty and for without authority, absenting himself from his place of duty.

17. Orders and the applicant's DD Form 214 (Report of Separation from Active Duty) show he was discharged in the grade of E-1 on 6 July 1976 under the provisions of AR 635-200, Chapter 13, paragraph 13-5a(1). His service was characterized as "Under Other than Honorable Conditions (UOTHC)." He was issued Separation Program Designator (SPD) Code "JLB" and Reentry Eligibility (RE) Code "4." The narrative reason for his separation was "Misconduct - Frequent Involvement of a Discreditable Nature with Authorities." He was credited with completion of 2 years, 11 months, and 20 days of net active service.

18. On 2 January 1980, the applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his discharge. On 2 December 1981, the applicant was informed that he was granted relief in the form of an upgrade of his discharge from UOTHC to Under Honorable Conditions (General). The applicant's original DD Form 214 was voided, and he was issued a new DD Form 214 showing his characterization of service as "Under Honorable Conditions." The narrative reason for his separation was unchanged.

19. During the applicant's era of service, and per the provisions of Army Regulation 635-200, Chapter 13, commanders could initiate separation action against Soldiers when, in the commanders' judgment:

- they would not develop sufficiently to participate in satisfactorily in training and/or become satisfactory Soldiers;
- the seriousness of the circumstances was such that the Soldier's retention would have an adverse impact on the military discipline, good order, and morale; and
- it was likely the Soldier would continue to be disruptive influences in present and future assignments
- it was likely that the circumstances forming the basis for initiation of separation procedures would continue or recur
- the ability of the Soldier to perform duties effectively in the future, including potential for advancement or leadership was unlikely

20. 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:

1. The Board determined 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.

2. 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 committed a misconduct – frequent incidents of a discreditable nature serious offense, as evidenced by his continued NJP, and non-response to counseling. As a result, his chain of command, initiated separation action against him. An administrative separation board recommended an undesirable discharge. He received an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. The ADRB later upgraded his discharge to general, which this Board found it to be the appropriate characterization for his service. 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 for correction of the records of the individual concerned.

8/1/2024

X [REDACTED]

CHAIRPERSON
[REDACTED]

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, USC, 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an

error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing.

3. Army Regulation 635-200, in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when the Soldier's subsequent honest and faithful service over a greater period outweighed the disqualifying entries found in his/her record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Under chapter 13:

(1) Commanders could initiate separation action against Soldiers when, in the commanders' judgment:

- they would not develop sufficiently to participate in satisfactorily in training and/or become satisfactory Soldiers;
- the seriousness of the circumstances was such that the Soldier's retention would have an adverse impact on the military discipline, good order, and morale; and
- it was likely the Soldier would continue to be disruptive influences in present and future assignments
- it was likely that the circumstances forming the basis for initiation of separation procedures would continue or recur
- the ability of the Soldier to perform duties effectively in the future, including potential for advancement or leadership was unlikely

(2) Prior to the initiation of separation action, the regulation stipulated that commanders ensure Soldiers had received adequate counseling and rehabilitation. The regulation pointed out that military service was a calling different from any civilian occupation, and as such, commanders were not to consider separation solely due to unsatisfactory performance unless the leadership had made efforts to rehabilitate the Soldiers.

(3) The regulation permitted separation authorities to furnish Soldiers separated under this provision with either an honorable or a general discharge under honorable conditions.

4. Army Regulation 635-5-1 (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. It states 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 "Discreditable Incidents – Civilian or Military."

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

6. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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, BCM/NRs 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//