

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 August 2024

DOCKET NUMBER: AR20230014085

APPLICANT REQUESTS:

- in effect, an upgrade of his under other than honorable conditions discharge to honorable
- reinstatement of his rank

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

- DD Form 149 (Application for Correction of Military Record)
- VA Form 21-4138 (Statement in Support of Claim)
- Claims Intake Center – Statement in Support of Claim
- Online Search
- Honorable Discharge Certificate
- Department of the Army (DA) Form 2-1 (Personnel Qualification 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 defers to his Department of Veterans Affairs (VA) representative in the Statement in Support of Claim. The representative states, on behalf of the applicant, he did not understand why his career terminated by a so call "dishonorable discharge." The representative questioned whether the applicant received legal counsel and the procedures of the "reviewing board" were appropriate. Prior to being stationed at Fort Carson, the applicant's military career was excellent. The applicant had an honorable enlistment period and was subsequently allowed to reenlist for a period of 6 years in Fort Hood, TX. The assignment history shows someone lined through the word "casual" and added the word "black." The representative believes it was an act of discrimination as it was evident the same person kept lining through his records and including

handwritten comments to include his reduction from team leader to squad leader. The act of discrimination was evident, and the representative contends it was the reason the applicant's military career was destroyed and he was barred from all benefits throughout the years.

3. The applicant provides:

a. A VA Form 21-4138, shows the applicant deferred his statement to the attached "Statement in Support of Claim," referenced above.

b. An online search of Veterans with an honorable discharge and a subsequent reenlistment that ended with a dishonorable discharge. Additionally, the search included benefits available for Veterans with honorable and dishonorable discharges.

d. An Honorable Discharge Certificate shows the applicant was discharged from the U.S. Army on 11 January 1982.

e. An extract of his DA Form 2-1 (Personnel Qualification Record) to be referenced in the service record.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 10 July 1979.

b. On his DA Form 2-1 in Block 35 (Records of Assignments) listed under Principal Duty the word "casual" was lined out and replaced with "black." Additionally, on two separate entries, the word "Team Leader" was lined out and replaced with "Squad Leader."

c. On 4 November 1982, he accepted nonjudicial punishment for failure to be at appointed place of duty on 1 October 1982, willfully disobeying a lawful command from a superior commissioned officer, disrespect to a superior commissioned, and failure to obey a lawful order from a superior noncommissioned officer. His punishment included reduction to specialist (SPC)/E-4. The applicant elected to appeal and provided a statement.

d. A self-authored statement wherein the applicant notes he went to the finance office in hopes of getting assistance with numerous pay discrepancies. He was only receiving enough pay to take care of his allotments, but nothing further. The applicant was marked qualified for separation. He arrived at 0830 and asked to see the officer in charge (OIC), First Lieutenant (1LT) R__ at 1305. He was informed by the OIC that he had been given an order to leave the building when in fact he had not. At that time Sergeant First Class (SFC) B__ walked into the office and asked what was wrong. The

applicant informed him that he was trying to get assistance with his pay issues. He realized neither 1LT R__ nor SFC B__ was willing to assist him and instead they called the military police stating he refused to leave the building. The applicant was arrested, handcuffed, and recommended for punishment to include reduction from sergeant (SGT) to specialist (SP4) and 45 days extra duty. He did not believe he should receive more punishment than another Soldier that received extra duty for his offense of driving under the influence. That would be unfair.

e. On 9 December 1982, the applicant underwent a medical examination for the purpose of administrative separation which indicated he was generally in good health. The applicant was marked qualified for separation.

- Standard Form (SF) 88 (Report of Medical Examination)
- SF 93 (Report of Medical History)

f. A DA Form 3822-R (Report of Mental Status Evaluation) shows the applicant underwent a mental evaluation. The psychiatrist noted the applicant had the mental capacity to understand and participate in the proceedings and was psychiatrically cleared for any administrative action deemed appropriate by the command.

g. On 10 December 1982, he accepted nonjudicial punishment for disobeying a lawful order from a superior commissioned officer on or about 6 December 1982. His punishment included reduction to private first class (PFC), E-3.

h. The immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separation – Enlisted Personnel) Chapter 14-12b for misconduct. The applicant acknowledged receipt of the notification.

i. After consulting with legal counsel, the applicant acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he may be ineligible for many or benefits as a Veteran under both Federal and State laws
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he is ineligible to apply for enlistment in the U.S. Army for a period of two years after discharge

j. The immediate commander initiated separation action against the applicant for misconduct.

k. On 3 January 1983, the immediate commander requested a waiver of rehabilitation transfer due to the applicant's quality and consistency of his duty performance. He had responded poorly to various rehabilitative measures. Additionally, his appearance, conduct, and performance standards were invariably the object of reprehension and disapproval. The commander further noted the applicant would never satisfactorily respond to unit level administrative rehabilitative measures regardless of their method of consistency or application.

l. On 3 January 1983, the intermediate commander strongly concurred with the immediate request for rehabilitative transfer wavier. The applicant should be discharged as soon as possible.

m. The available service records is void of the separation authority approval.

n. On 17 February 1983, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 3 years, 7 months, and 8 days of active service with no lost time. Block 18 (Remarks) shows immediate reenlistment this period 10 July 1979 thru 11 January 1982. He was assigned separation code JKM and the narrative reason for separation listed as "Misconduct – Pattern of Misconduct," with reentry code 4. It also shows he was awarded or authorized:

- NCO Professional Development Ribbon with numeral 2
- Army Service Ribbon
- Overseas Service Ribbon
- Marksmanship Qualification Badge (M-16 Rifle)

5. A review of the applicant's record confirms an administrative entry was omitted on his DD Form 214. The entry will be added to his DD Form 214 as an administrative correction and will not be considered by the Board.

6. On 7 November 1984, the applicant was notified the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

7. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as commission of a serious offense, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

8. 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 partial relief was 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 determined the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based upon a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust. Furthermore, the Board agreed there is insufficient evidence that supports restoration of the applicant's rank.

2. However, during deliberation, the Board determined the applicant had a prior period of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service by granting a partial relief to correct the applicant's records..

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 by adding the following entry in item 18 (Remarks): Continuous Honorable Active Service from 19790710 to 19820111.
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an upgrade of the applicant's under other than honorable conditions discharge to honorable and reinstatement of his rank.



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.

ADMINISTRATIVE NOTE(S): N/A

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 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for item 18 (Remarks) to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" 10 July 1979 Until 11 January 1982.
3. Army Regulation 635-200 (Personnel Separation – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed. Paragraph 14-12b, conduct prejudicial to good order and discipline. Discreditable conduct and conduct prejudicial to good order and discipline includes conduct violative of the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

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/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 based on 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//