

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 August 2024

DOCKET NUMBER: AR20230014126

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions characterization of service.

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, he did not understand what he was doing at the time. He never had a checking account before, and it was all new technology for him. He paid the overdraft debt within a short amount of time.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 26 July 1983. The highest grade he held was specialist four (SP4/E-4).
 - b. A letter from A_E_I Banking Corporation, dated 26 August 1985, which states on 19 August 1985 the applicant's account was overdrawn by \$160.67, and the overdraft increased to \$235.42 as of 21 August 1985.
 - c. A letter from his bank, dated 28 August 1985, which states the bank's letter from 26 August 1985 advised the applicant that his account was overdrawn in the amount of \$160.67. The overdraft increased to \$415.25.
 - d. A letter from his bank, dated 30 August 1985, which shows the applicant's account was closed and the bank requested that he return any unused checks to the bank immediately, and at the same time settle his overdrawn account in the amount of \$995.25.

e. A letter from the bank, dated 25 September 1985, which shows the applicant was indebted to the bank in the amount of \$2,455.46. The bank formally demanded that he settle the outstanding amount no later than 5 October 1985.

f. The applicant's bank statement dated 25 October 1985, which shows his account was overdrawn by \$2,303.15.

g. A signed statement from the applicant to the bank, dated 25 October 1985, which states he was fully aware that he was in debt to A_ E_ I_ Banking Corporation in the amount of \$2303.15, in connection with his overdrawn checking account. He agreed to initiate an allotment in the amount of \$550.00, which would be deposited to his overdrawn account until such time as his outstanding obligation with the bank had been paid.

h. DA Form 1341 (JUMPS – Army Allotment Authorization), dated 25 October 1985, which shows the applicant started an allotment in the amount of \$550.00 to A_ E_ I_ Banking Corporation to be paid monthly from November 1985 to February 1986.

i. Criminal Investigation Division (CID) Report of Investigation, dated 25 November 1985, shows the applicant used his A_ E_ automatic teller card to intentionally overdraw his account by \$2,909.15, A_ E_ Bank.

(1) On 1 November 1985, captain (CPT) J_ B_, C Battery, 1st Battalion, 81st Field Artillery, brought A_ E_ Bank documents pertaining to the applicant into the CID and requested an investigation. CPT J_ B_ provided CID a copy of DA Form 1341, wherein the applicant had authorized a monthly allotment of \$550.00 to go to the A_ E_ I_ Banking Corporation and a letter from the applicant which stated he intended to repay his debt.

(2) On 1 November 1985, the applicant was advised of his rights for Uttering Worthless Checks and Larceny. The applicant waived his rights, and provided a sworn statement, wherein he stated that he was aware that he was overdrawing his checking account by continual use of his automatic teller card.

(3) On 8 November 1985, Mr. T_ R_, the relief teller from the bank was interviewed. When asked how the applicant overdrew his account from 19 August 1985 to 2 October 1985, Mr. T_ R_ was unable to explain how the bank could have missed it. Mr. T_ R_ related that the teller machine was not "on-line" which means that it was not hooked up with the computer. He stated that overdrawn account problems like the applicant's were normally noticed within two weeks, and he could not explain how the applicant could have overdrawn his account for a five-week period.

(4) On 4 November 1985, CPT J_ D_, Operations Officer, C Battery,

1st Battalion, 81st Field Artillery was apprised of the final result of the investigation and the report of investigation was coordinated with the Staff Judge Advocate's Office, who stated that there was sufficient evidence to title the applicant for the offense of Uttering Worthless Checks.

j. Court-martial charges were preferred against the applicant on 22 January 1986. His DD Form 458 (Charge Sheet) shows he was charged with, some dates between 19 August 1985 and 2 October 1985, stealing money, of a value of about \$2,909.15, (more or less), the property of A_E_I_ Banking Corporation.

k. On 24 January 1986, after consulting with legal counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial, under Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10 and acknowledged the following:

(1) He made the request of his own free will and was not coerced by any person.

(2) His understanding that by requesting discharge, he was admitting guilt to the charges against him or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge.

(3) He understood that if his discharge request was approved, he may be discharged under conditions other than honorable and furnished an under other than honorable discharge certificate.

(4) He could be deprived of many or all Army benefits and he may be ineligible for many or all benefits administered by the Veteran's Administration. He could be deprived of his rights and benefits as a veteran under both Federal and State law and encounter substantial prejudice in civilian life because of an under other than honorable discharge.

(5) He understood that he must apply to the Army Discharge Review Board (ADRB) or the ABCMR for review of his discharge and the act of consideration by either Board does not imply that his discharge will be upgraded. He was advised that he could submit statements in his own behalf and elected not to do so.

l. On 24 January 1986, the immediate commander recommended approval of the request for discharge in lieu of trial by court-martial, with a general, under honorable conditions discharge. The commander noted that the applicant had paid his entire debt and performed well during this situation.

m. On 24 January 1986, the intermediate commanders recommended approval of the request for discharge in lieu of trial by court-martial, with characterization of service

under other than honorable conditions. The battalion commander noted that the applicant made every effort to repay his debt fully. He believed justice would be best served by discharging the applicant versus a trial.

n. The separation authority approved the recommended discharge on 16 February 1986, directed the applicant be reduced to the lowest enlisted grade, and be issued an under other than honorable conditions discharge.

o. The applicant underwent a mental status evaluation on 4 March 1986. The evaluation shows the applicant had the mental capacity to understand and participate in proceedings.

p. On 4 March 1986, the applicant underwent a medical examination for the purpose of being chaptered out of the Army. The medical examiner noted that he was qualified for separation.

q. The applicant was discharged on 6 March 1986. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, in the rank grade of private/E-1, and his service was characterized as under other than honorable conditions. This form also shows in:

- Item 12c (Net Active Service This Period): 2 years, 7 months, 8 days
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, Army Achievement Medal, Overseas Service Ribbon, Expert Qualification Badge with rifle bar (M-16), and the Expert Qualification Badge with hand grenade bar.
- Item 26 (Separation Code): KFS
- Item 27 (Reenlistment Code): RE-3, 3B, 3C
- Item 28 (Narrative Reason for Separation): For the Good of the Service – In Lieu of Court-Martial
- Item 29 (Dates of Time Lost During This Period): 19 February 1985 to 21 February 1985

4. There is no indication the applicant applied to the ADRB 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:

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 available evidence shows the applicant was charged with commission of an offense (stealing money) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. 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 available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a Soldier who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

3. AR 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 10 for the Good of the Service in lieu of court-martial would receive a separation code of "KFS."

4. AR 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. 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//