

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 August 2024

DOCKET NUMBER: AR20230014141

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) discharge.

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 has cleaned up his life and would like a second chance. He needs an upgrade to receive medical coverage through the Department of Veterans Affairs.
3. On 9 April 1980, the applicant enlisted in the Regular Army. Upon completion of training, he was awarded military occupational specialty 13E (Cannon Field Specialist). The highest grade he attained was E-2.
4. On 29 October 1980, the applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for going from his appointed place of duty, on or about 5 October 1980; and being disrespectful to a non-commissioned officer (NCO), on or about 10 October 1980. His punishment included forfeiture of \$100.00, and 14 days extra duty.
5. On 6 February 1981, the applicant accepted NJP under Article 15 of the UCMJ, for being disorderly in station, on or about 24 January 1981. His punishment included forfeiture of \$50.00 for one month.
6. On 22 May 1981, the applicant accepted NJP under Article 15 of the UCMJ, for operating a vehicle in a reckless manner, on or about 15 May 1981; and disobeying a

lawful order from his superior NCO, on or about 15 May 1981. His punishment included reduction to E-1, forfeiture of \$116.00, and 14 days restriction and extra duty.

7. On 7 December 1981, the applicant accepted NJP under Article 15 of the UCMJ, for disobeying a lawful order from his superior NCO, on or about 6 November 1981. His punishment included forfeiture of \$128.00 and 14 days restriction and extra duty.

8. On 21 January 1982, the applicant accepted NJP under Article 15 of the UCMJ, for disobeying a lawful order from his superior NCO, on or about 8 January 1982. His punishment included forfeiture of \$50.00 and 14 days extra duty.

9. On 16 February 1982, the applicant accepted NJP under Article 15 of the UCMJ, for disobeying a lawful general regulation by having a marijuana smoking device in his possession, on or about 18 January 1982; being disrespectful in language towards his superior NCO, on or about 28 January 1982; disobeying a lawful order from his superior NCO, on or about 28 January 1982; and failing to go at the time prescribed to his appointed place of duty, on or about 11 February 1982. His punishment included forfeiture of \$275.00 per month for two months and 30 days confinement.

10. On 30 March 1982, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

11. The applicant's commander notified him that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separation – Enlisted Personnel), Chapter 14, for frequent incidents of discreditable nature with military authorities.

12. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, paragraph 14-33b(1), for frequent incidents of discreditable nature with military authorities. As the specific reasons, the commander noted the applicant's six NJPs.

13. On 6 April 1982, the applicant acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him. He acknowledged he understood that, as the result of issuance of a discharge UOTHC, he may be ineligible for many or all benefits as a Veteran under both Federal and State laws. He declined to submit a statement in his own behalf.

14. By legal review on 24 May 1982, the applicant's Chapter 14, separation action was found to be legally sufficient for further processing.

15. Consistent with the chain of command recommendations, the separation authority approved the recommended discharge on 1 June 1982, and directed the issuance of an UOTHC discharge certificate.

16. The applicant was discharged on 18 June 1982. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200, paragraph 14-33b(1), for misconduct – frequent involvement in incidents of a discreditable nature with civil or military authorities. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Program Designator JKA and Reentry Code 4. He completed 2 years, 2 months, and 10 days of active service this period.

17. 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:

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 with the commander citing frequent incidents of discreditable nature with 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 based on the applicant's that six incidents of nonjudicial punishment, the characterization of service the applicant received upon separation was appropriate.

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 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, paragraph 14-33b(1) provides for the separation of Soldiers when they have patterns of misconduct for frequent incidents of discreditable nature with civil or military authorities. The issuance of a discharge UOTHC is normally considered appropriate for separations under the provisions of this chapter.

3. 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.

//NOTHING FOLLOWS//