

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 July 2024

DOCKET NUMBER: AR20230014571

APPLICANT REQUESTS:

- an upgrade of his general, under honorable conditions discharge to honorable
- a personal appearance before the Board

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 is requesting an upgrade of his general, under honorable conditions discharge to honorable. At the time of discharge his father was having medical issues that required him to be there for him and his mother. He tried to be discharged from the service, but his leadership said there was no way for him to be released so he could return home to his family. He was told the Army could not put out a "good" Soldier. The only way out was to be discharged by signing paperwork stating he was late for formations, not having haircuts, and other minor issues. He signed the paperwork and was told he would receive a general discharge with honorable conditions. He now seeks to have his discharge changed to honorable, if at all possible. He feels that he was a good Soldier and if it was not for the fact that he needed to be home for his family, he would have stayed the total time of his term. He has never tried to have his discharge changed due to the fact he never had the need or desire to use benefits from Department of Veterans Affairs. He always felt that he was not given consideration for his requirement to support his family. He was given an "out" with a general discharge and he took it. The discharge does not sit well with him and he seeks an upgrade to honorable.
3. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 23 November 1982.

b. On 11 July 1983, he accepted nonjudicial punishment for failure to go at the time prescribed to his appointed place of duty, to wit 0545 hours formation. His punishment included reduction to private (PVT)/E-1.

c. A DA Form 3822-R (Report of Mental Status Evaluation), dated 2 August 1983, shows the applicant was referred for a mental evaluation for the purpose of separation. The physician noted the applicant was psychiatrically cleared for administrative action deemed appropriate by command.

d. On 8 August 1983, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 13, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) for unsatisfactory performance. The specific reasons for his proposed recommendation were based upon that the applicants unsatisfactory performance through actions and interests which were detrimental to the maintenance of good order and discipline within the company. Additionally, the applicant had a poor attitude and set a bad example for incoming Soldiers.

e. On 9 August 1983, after consultation with legal counsel, he 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 all 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 Army for 2 years after discharge
- he elected not to submit matters on his own behalf

f. The immediate commander initiated separation action against the applicant under the provisions of AR 635-200, Chapter 13, for unsatisfactory performance. The intermediate commanders recommended the applicant receive a general, under honorable conditions discharge.

g. On 9 August 1983, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 13, AR 635-200, unsatisfactory performance. He would be issued a General Discharge Certificate.

h. On 16 August 1983, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 8 months and 24 days of active service. He was assigned separation code JKJ and the narrative reason for separation listed as "Unsatisfactory Performance," with reenlistment code 3. It also shows he was awarded or authorized:

- Army Service Ribbon
- Hand Grenade (Expert)
- Rifle M-16 (Sharpshooter)
- TOW Gunner (Expert)
- M-203 (Expert)
- ITV Gunner (Marksman)

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

6. By regulation, (AR 635-200) a member may be separated when it is determined that he or she is unqualified for further military service because of unsatisfactory performance. The service of members separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military record.

7. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination 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 displayed unsatisfactory performance through actions and interests which were his commander described as detrimental to

the maintenance of good order and discipline within the company. Additionally, the applicant had a poor attitude and set a bad example for incoming Soldiers. As a result, his chain of command initiated separation action against him for unsatisfactory performance. He was separated with an under honorable conditions discharge (general). 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 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 (Personnel Separations – 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 13 provides that a Soldier may be separated when it is determined that he/she is unqualified for further military service because of unsatisfactory performance when in the commander's judgment; the Soldier will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier; the seriousness of the circumstances is such that the Soldier's retention will have an adverse impact on military discipline, good order, and morale; the Soldier will likely be a disruptive influence in duty assignments; the circumstances forming the basis for

initiation of separation proceedings will likely continue or recur; the Soldier's ability to perform duties effectively is unlikely; and/or the Soldier's potential for advancement or leadership is unlikely.

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//