

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 July 2024

DOCKET NUMBER: AR20230014609

APPLICANT REQUESTS:

- reconsideration of his previous request to upgrade his under other than honorable conditions discharge
- as a new issue, correct his Separation Code to something more favorable
- personal appearance before the Board

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

- DD Form 293 (Application for The Review of Discharge from The Armed Forces of The United States)
- High School Diploma
- Pre-apprenticeship program completion certificate, 1 April 1983
- Certificate of ordination, 7 May 200
- His minister identification card
- Dean's list recognition certificate, 12 May 2000
- Commercial driver's license (CDL) program certificate of completion, 2 April 2007
- Law enforcement program certificate of completion, 20 June 2009
- School of the Bible final grade report, 21 November 2013
- Local News article, 1 January 2014
- A second certificate of ordination, 7 May 2014
- A certificate of appreciation, 2018
- Municipal Police Officers' Education & Training Commission (MPOETC) certificate of completion, 30 March 2021
- Juvenile Justice certificate of completion, 19 August 2021
- Use of force certificate of completion, 26 June 2022

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AC86-03218 on 4 November 1987.

2. The applicant states "Looking back over my life I realize I have made mistakes, and some can be contributed to not being raised with a mother, father or having an authority figure in my life. I take full responsibility for my failures and shortcomings. But with that said, I still completed 3.5 years of Army service. After my Army discharge, I went onto be employed on a job for 24 years while pastoring my first church for 13 years and another for 7 years. I have worked as a nursing assistant caring for the sick, school bus driver, security officer unarmed and armed, and finally as a police officer currently for the last 8 yrs. Along my journey post discharge I have had numerous recommendations with my character exemplifying what the Army and being a United States citizen stands for. I can look back and give thanks for the time spent in the Army. The principles that I learned are applied to my life today. And because of this I'm requesting that my status be changed and upgraded to honorable discharge. My greatest accomplishment has been to be married to the same woman for the past 37.5 years. I am now an asset and positive influence on society."

3. The applicant provides 14 certificates that capture a variety of his post service accomplishments. These documents capture his academic excellence, ministry work, law enforcement and personal commendations. The certificates are available for the Boards review.

4. The applicant's service record shows the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the United States) shows he enlisted in the Regular Army on 20 February 1979 for four years.

b. DA Forms 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) reflect the applicant received the following non-judicial punishments under the provisions of Article 15, UCMJ:

(1) On 23 October 1980, for using disrespectful language toward a noncommissioned officer (NCO). His punishment consisted of reduction to private (PVT) E-2, forfeiture of pay of \$100.00 pay, and extra duty and restriction. On appeal, the imposing officer suspended the reduction to E-2 for 120 days.

(2) On 28 March 1981 for without authority go from his guard with intent to abandon the same. His punishment consisted of reduction to PVT/E-1 (suspended until 5 August 1981), forfeitures of pay of \$100 pay, and extra duty and restriction. He appealed but his appeal was denied.

(3) on 28 September 1981 for disobeying a lawful order from an NCO. His punishment consisted of reduction to PV2/E-2, forfeitures of pay of \$144.00 suspended until 5 December 1981, and extra duty and restriction. He appealed but his appeal was denied.

c. The applicant was also frequently counseled by members of his chain of command for a variety of infractions.

- 26 March 1982 for missing formation
- 2 April 1982 for being late to work
- 21 April 1982 for being absent from his appointed place of duty
- 24 April 1982 for being absent from his appointed place of duty
- 27 April 1982 for being absent from his appointed place of duty
- 4 May 1982 for being absent from his appointed place of duty

d. A partial DA Form 2627 shows he received NJP for being absent from his appointed place of duty on 11 February 1982. His punishment consisted of reduction to PVT/E-1, forfeitures of pay of \$100.00, and extra duty and restriction. He appealed but his appeal was denied.

e. DA Form 2627, shows he received NJP for failure to go at the time prescribed to his appointed place of duty on 26 March 1982. His punishment consisted of forfeitures of pay of \$275.00 per month for two months, and 30 days of restriction and extra duty. He appealed but his appeal was denied.

f. DA Form 3822-R (Report of Mental Status Evaluation), dated 15 April 1982, shows he was command referred to undergo a mental status evaluation. He was seen for two sessions but failed to keep the other appointments scheduled and didn't return messages left for him or attempted to schedule another appointment on his own. The counselor observed lack of respect for rank. The applicant believed if someone was disrespectful to him, he would be disrespectful in return regardless of their rank. He was not motivated to seek or attain any help from that clinic. He presented no psychiatric disorder however his problem dealing with authority figures would continue to be a problem for his unit. He was psychiatrically cleared for any administrative action deemed appropriate by the command. He had the mental capacity to understand and participate in proceedings and was mentally responsible. This document further shows the following in remarks:

- Had normal behavior
- He was fully alert
- He was fully oriented
- His mood or affect was unremarkable
- His thinking process was clear
- His thought content was normal
- His memory was good

f. On 24 May 1982, his commanding officer initiated separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, paragraph 14-33b (1) (Misconduct). After consulting with legal counsel for his separation action under and its effects of the rights available to him, and the effect of any action taken by him in waiving his rights. He further acknowledged:

- he could consult with consulting counsel as his military counsel and/or civilian counsel at no expense to the government
- he waived consideration of his case by a board of officers
- he was advised he could submit any statements he desired in his own behalf
- he had not been subjected to coercion with respect to his request for discharge and had been advised of the implications that were attached to it
- he could be ineligible for many, or all benefits administered by the VA
- he could be deprived of many, or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he could expect to encounter substantial prejudice in civilian life by reason of a general under honorable conditions discharge

g. On 28 May 1982, the brigade commander recommended that the applicant be discharged under the provisions of AR 635-200, Chapter 14, misconduct.

h. On 1 June 1982 the separation authority directed that the applicant be separated from the Army under the provisions of paragraph 14-33b (1), AR 635-200 with a characterization of UOTHC.

i. His DD Form 214 for the period ending 11 June 1982, shows he was discharged pursuant to AR 635-200, Chapter 14-33b (1) with a UOTHC discharge, due to misconduct – frequent incidents of a discreditable nature with civil or military authorities, He received a separation code of “JKA” and a reentry code of “4”. He completed 3 years, 3 months, and 22 days of net active service this period. His grade at the time of discharge was PVT/E-1.

5. On 30 September 1983, the Army Review Discharge Board (ADRB) denied the applicant’s request for an upgrade to his characterization. The ADRB found that the reason for his discharge and the characterization were both proper and equitable.

6. In prior ABCMR Docket Number AC86-03218, dated 4 November 1987, where the applicant requested his discharge be upgraded from UOTHC to Honorable, and a personal appearance before the Board. After reviewing the application and all supporting documents, the Board denied the applicant’s request for a recharacterization of service and found that the characterization was both proper and equitable. The Board determined that the application was not filed within the time required and it is not in the

interest of justice to excuse the applicant's failure to do so. The complete case is available for the Boards review.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge upgrade: Partial Grant. The evidence shows the applicant committed a misconduct – frequent incidents of a discreditable nature serious offense, as evidenced by his multiple NJPs and failure to respond to counseling. As a result, his chain of command, initiated separation action against him. The Board found no error or injustice in his separation processing. The Board noted that the applicant provides several certificates that capture his post service accomplishments and speak of his academic excellence, ministry work, law enforcement and personal commendations. Based on his submission of various documents in support of a clemency determination, the Board determined that while his service did not rise to the level required for an honorable discharge; a general, under honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further determined that such upgrade did not change the underlying reason for his separation and thus the narrative reason for separation and corresponding codes should not change.

b. The Board noted that the applicant was separated under the provisions of chapter 14-33 of AR 635-200 for misconduct. By regulation, enlisted Soldiers separated under chapter 14-33 of AR 635-200 for misconduct are assigned Separation Code JKA. This is properly listed on his DD Form 214 and the Board did not find it 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:

1. The Board determined the evidence presented is sufficient to warrant partial amendment of the ABCMR's decision in Docket Number AC86-03218 on 4 November 1987. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 11 June 1982, as follows:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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 any relief in excess of that described above

█

█

█

█

█

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. Army Regulation 15-185 (Army Board for Correction of Military Records) 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.

2. Army Regulation AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, MSO, or period for which called or ordered to active duty.

c. Chapter 14-33b (1) establishes the policy and prescribes procedures for the elimination of enlisted personnel for misconduct by reason of patterns of misconduct for frequent incidents of discreditable nature with civil or military authorities.

3. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "JKA" is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 14-33b (1), based on Pattern of misconduct.

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. 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. 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//