

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 October 2024

DOCKET NUMBER: AR20230014937

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

FACTS:

1. The applicant states he would like his discharge upgraded. He was unaware of his choices at the time of his discharge. He is wiser now and requests the Army Review Boards Agency make the necessary upgrade.

2. The applicant states he is requesting an upgrade of his discharge. He was young and unaware of the choices at the time. He is wiser now and asks for consideration of an upgrade.

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

a. He enlisted in the Regular Army on 15 May 1980.

b. His DA Form 2-1 (Personnel Qualification Record) shows he served in Germany from 3 October 1980 to 29 March 1982.

c. He accepted nonjudicial punishment for the below listed offenses:

- 16 September 1980 - wrongful possession of marijuana
- 30 March 1981 - disobeying a lawful order from a noncommissioned officer (NCO)
- 12 May 1981 - failure to go to his appointed place of duty

- 22 June 1981 - failure to go to his appointed place of duty and disrespect to an NCO

d. On 1 July 1981, the applicant underwent a mental evaluation. The DA Form 3822-R (Report of Mental Status Evaluations) shows the applicant was mentally responsible for his behavior, can distinguish right from wrong, and possesses sufficient mental capacity to participate in administrative proceedings.

e. The service record includes the applicant's medical evaluations, dated 1 July 1981, for the purpose of separation which indicated he was generally in good health. He was marked qualified for separation.

- Standard Form (SF) 88 (Report of Medical Examination)
- SF 93 (Report of Medical History), dated 1 July 1981

f. On 11 August 1981, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14 for misconduct. The specific reasons for his proposed recommendation were his continuous rebellion against all forms of authority. Additionally, he showed no signs of improvement towards rehabilitation. The applicant acknowledged receipt of the notification on the same day.

g. On 11 August 1981, after consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- waive consideration of his case by board officers
- he may encounter substantial prejudice in civilian life if a discharge under other than 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 is ineligible to apply for enlistment in the Army for 2 years after discharge

h. On 11 August 1981, the immediate commander initiated separation action against the applicant for misconduct. The intermediate commanders recommended approval.

i. On 10 September 1981, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14, paragraph 14-33 for misconduct, an established pattern of shirking. He would be issued an under other than honorable conditions discharge.

j. On 22 September 1981, he was discharged from active duty with an under other than honorable conditions discharge. His DD Form 214 shows he completed 1 year, 4 months, and 8 days of active service with no lost time. He was assigned separation code JKJ and the narrative reason for separation listed as "Misconduct – An Established Pattern for Shirking," with reenlistment code 3. It also shows he was awarded or authorized:

- Army Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade Bar

4. On 5 December 1983, the applicant was notified the Army Discharge Review Board (ADRB) reviewed his discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

5. 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.

6. 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 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 a continual rebellion against all forms of authority and failure to show signs of improvement toward rehabilitation. 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 that 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 (Active Duty Enlisted Administrative Separations), 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.

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/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//