

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 August 2024

DOCKET NUMBER: AR20230015121

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

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Separation from Active Duty)

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 was not working in the job that he was trained for. He was considered an expert in his job. He requested an early out with the battery commander. He said he was going to put him out on a general under honorable conditions and then there was a change of command. The new battery commander would not go through with his request. He told him the only way he could get out was to screw up, so that is what he did. He was a good Soldier up until that point.

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

a. On 12 January 1976, the applicant enlisted in the Regular Army and was awarded the military occupational specialty (MOS) 16J (Defense Acquisition Radar Crewman).

b. On 14 September 1976, the applicant accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ), for on 10 September 1977, without authority absent himself from his place off duty, and did remain so absent until on or about 11 September 1977. His punishment consisted of reduction to E-1 (suspended for a period of 30 days); forfeiture of \$50.00 pay for one month (suspended for 30 days); and 14 days extra duty.

c. On 4 March 1977, the applicant accepted NJP under Article 15, UCMJ, for failure to go to his appointed place of duty on 1 March 1977. His punishment consisted of reduction to E-2; forfeiture of \$50.00 pay for one month; and 14 days extra duty.

d. On 1 August 1977, the applicant accepted NJP under Article 15, UCMJ, for violating a lawful order on 27 July 1977. His punishment consisted of reduction to E-1; forfeiture of \$25.00 pay for one month; and 7 days extra duty. The DA Form 2627 further states in section III, the applicant also failed to go to his appointed place of duty on 27 July 1977.

e. On 6 September 1977, the applicant's duty status changed from present for duty to absent without leave (AWOL).

f. On 8 September 1977, the applicant's duty status changed from AWOL to present for duty.

g. On 9 September 1977, the applicant accepted NJP under Article 15, UCMJ, for on 1 September 1977, without authority absent himself from his place off duty, and did remain so absent until on or about 2 September 1977. His punishment consisted of forfeiture of \$87.00 pay for one month; 14 days extra duty, and 14 days restriction.

h. On 31 October 1977, the applicant accepted NJP under Article 15, UCMJ, for wrongfully having in his possession one bag, more or less of a drug, to wit: marijuana on 9 September 1977. His punishment consisted of 10 days restriction and 30 days extra duty. The DA Form 2627 further states in section III, the applicant without authority absent himself from his unit on or about 0630 hours, 8 September 1977, and did remain so absent until on or about 1200 hours.

i. On 16 November 1977, the applicant's duty status changed from present for duty to confined to civil authorities; he was confined for one day and present for duty on 17 November 1977.

j. On 1 November 1977, his immediate commander issued a DA Form 4126 (Bar to Reenlistment Certificate), which states the applicant has a continuing pattern of irresponsible behavior which clearly indicates that he will never become a quality Soldier. Applicant is currently undergoing elimination proceedings UP Chapter 13, Army Regulation 635-200. He has a continuing pattern of Article 15 offenses.

k. Orders Number 256-56, issued by Headquarters, U.S. Army Air Defense Center and Fort Bliss, 14 December 1977, shows the applicant was discharged, effective 16 December 1977, under other than honorable conditions.

I. The applicant's record is void of the specific facts and circumstances surrounding his discharge processing. However, it does contain a DD Form 214 which shows he was discharged on 16 December 1977, under the provisions of Chapter 13-5a (1) of AR 635-200 with an under other than honorable conditions characterization of service. His DD Form 214 also shows:

- he completed 1 year, 11 months, and 3 days of active service
- he was assigned Separation Code JKA and Reentry Code 3/3B
- he was awarded or authorized the Marksman Marksmanship Qualification Badge with Rifle Bar

4. There is no indication he petitioned the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. By regulation (AR 635-200), chapter 13 provides that separation action be taken when in the commander's judgment the individual will not develop sufficiently to participate satisfactorily in further military training and/or become a satisfactory Soldier. Service of Soldiers separated because of unsatisfactory performance under this regulation is characterized as honorable or under honorable conditions.

6. 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. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board found insufficient evidence of in-service mitigating factors to overcome the pattern of misconduct. The Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period of 1 year, 11 months, and 3 days of active service.

2. The Board noted, the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination that might have mitigated the discharge characterization. The Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the

requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a honorable discharge. Therefore, the Board denied relief.

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 (Then Personnel Separations and now Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 13-2a provides that Commanders will separate a Soldier for unsatisfactory performance when it is clearly established that:

(1) In the commander's judgment, the Soldier will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier.

(2) The seriousness of the circumstances is such that the Soldier's retention will have an adverse impact on military discipline, good order, and morale.

(3) The Soldier will likely be a disruptive influence in duty assignments.

(4) The circumstances forming the basis for initiation of separation proceedings will likely continue or recur.

(5) The Soldier's ability to perform duties effectively is unlikely.

(6) The Soldier's potential for advancement or leadership is unlikely.

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//