

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 August 2024

DOCKET NUMBER: AR20230015172

APPLICANT REQUESTS: reconsideration of his previous request to upgrade his under other than honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Decision Letter

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 AR20210014376 on 24 June 2022.
2. The applicant states on 24 August 2020, the VA granted him an honorable discharge in regard to his VA benefits. He is trying to obtain a military identification card for himself and his wife, as well as health insurance. Additionally, since his separation from the military he has been a model citizen and an owner/operator truck driver.
3. The applicant provides a VA Benefits letter dated 24 August 2020 that states his U.S. Army service from 10 April 1984 to 16 July 1990 is honorable and is not a bar to VA benefits under the provisions of 38 CFR 3.12(d)(4).
4. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 10 April 1984.
 - b. On 6 January 1987, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for being drunk and disorderly, assaulting a military police officer and threatening to kill him on or about 5 October 1986. After an open hearing, in which the applicant personally presented matters in defense, extenuation, and/or mitigation, the commander found him guilty; his punishment included a suspended reduction to private first class/E-3.

c. On 23 June 1987 the applicant reenlisted in the Regular Army.

d. Orders 112-38 issued by Headquarters, 82nd Airborne Division on 22 June 1988 ordered promotion of the applicant to sergeant/E-5 with an effective date of 1 July 1988.

e. A DA Form 458 (Charge Sheet) preferred court-martial charges on 11 May 1990, for violation of the Uniform Code of Military Justice (UCMJ) for four specifications of violating Article 128 (Assault) by:

- assaulting SGT P_ B_, by hitting him in the head with his fist and kicking him in the abdomen with his foot
- assaulting SGT P_ B_, by striking him on the elbow with the butt stock of an M16A2 rifle with a means likely to produce death or grievous bodily harm
- unlawfully striking Private First Class (PFC) J_ P_ in the head with his fist
- assaulting Specialist (SPC) R_ F_, by striking at him with his fist

f. On 1 June 1990, the applicant, through counsel, submitted a request for discharge in lieu of trial by court-martial.

g. On 13 June 1990, the separation authority approved the applicant's request, directed reduction to private/E-1, and issuance of an Under Other than Honorable Discharge Certificate.

h. On 16 July 1990, orders discharged the applicant accordingly, with an under other than honorable characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 6 years, 3 months, and 7 days of active service. His DD Form 214 also shows he was awarded or authorized:

- Army Service Ribbon
- Parachutist Badge
- Overseas Service Ribbon
- Army Good Conduct Medal
- Army Achievement Medal with 1 Oak Leaf Cluster
- NCO Professional Development Ribbon
- Multi-National Forces Observe Service Medal
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- Sharpshooter Marksmanship Qualification Badge with Hand Grenade Bar

5. On 24 June 2022, the ABCMR granted partial relief by administratively correcting his DD Form 214 to read "continuous honorable service from 19840410-19870622," but denied his request to upgrade his discharge. The Board found the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board

determined the overall merits of his case were insufficient as a basis for correction of the applicant's records.

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 charged with assaulting another Soldier by hitting him in the head and kicking him in the abdomen, striking him on the elbow with means to likely produce death or grievous bodily harm, assault two other Soldiers by striking them on the head with his fist, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board concluded that the characterization of service the applicant received upon separation was not in error or unjust and 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 amendment of the ABCMR decision rendered in Docket Number AR20210014376 on 24 June 2022.

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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. Army Regulation 635-5 (Separation Documents) states:

a. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

b. For block 24 (Character of Service) the correct entry is vital as it affects a soldiers' eligibility for post-service benefits. Characterization or description of service is determined by directives authorizing separation. The entry must be one of the following: honorable, under honorable conditions (general), under other than honorable conditions, bad conduct, dishonorable, or uncharacterized.

2. Army Regulation (AR) 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a Soldier who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not being coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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//