

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 August 2024

DOCKET NUMBER: AR20230015174

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge
- a 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), 26 October 2023

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 at an immature age and made poor decisions and he regrets them to this day. He is requesting a second chance due to his discharge being over 30 years. He feels that he has redeemed his character at this point and would like to have the upgraded discharge to reflect the good character that he started with.
3. The applicant enlisted in the Regular Army on 27 June 1984, for a period of 3 years. He was awarded the military occupational specialty 12B (Combat Engineer).
4. On 14 December 1984, the applicant accepted non-judicial punishment (NJP), under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for being drunk and disorderly on or about 6 November 1984. His punishment imposed was reduction to the grade of E-1, forfeiture of \$283.00 per month for two months, extra duty and restriction for 45 days.
5. On 1 May 1985, he accepted NJP, under the provisions of Article 15, of the UCMJ for failing to go to his prescribed appointed places of duty, physical training formation and company work call formation; and disobeying a lawful order on or about

16 April 1985. His punishment imposed was forfeiture of \$133.00 pay for one month, extra duty and restriction for 14 days.

6. The applicant's commander notified him on 3 May 1985, of the intent to initiate administrative separation action under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13, by reason of unsatisfactory performance. Further stating the reason for the proposed action was due to the applicant's failure to be at his appointed place of duty, lack of promotion potential, lack of motivation, inability to work in harmony with his fellow service members, inability to adapt to military life, and his lack of desire to remain in the Army.

7. The applicant acknowledged the notification on the same date. He was advised by consulting counsel of the basis for the contemplated action to separate him for unsatisfactory performance under AR 635-200, Chapter 13, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights. He acknowledged understanding that he may expect to encounter substantial prejudice in civilian life if a under honorable conditions (general) discharge was issued to him. He elected not to submit a statement in his own behalf.

8. On 3 May 1985, the applicant's immediate commander formally recommended him for separation under the provisions of AR 635-200, Chapter 13. Further stating, the applicant displayed a pattern of unsatisfactory performance by receiving six counseling statements and NJPs.

9. A DA Form 3822-R (Report of Mental Status Evaluation) shows on 31 May 1985 the applicant was found mentally capable and responsible to understand and participate in the Chapter 13 proceedings.

10. The separation authority approved the discharge recommendation on 19 June 1985. Further directing the applicant be furnished a General Discharge Certificate.

11. The applicant was discharged on 19 July 1985, under the provisions of AR 635-200, Chapter 13, by reason of unsatisfactory performance. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his service was characterized as under honorable conditions (General), with separation code JHJ and reenlistment code RE-3. He completed 1 year and 23 days of active service. His awards included the Army Service Ribbon and two Marksmanship Qualification Badges.

12. The Army Discharge Review Board reviewed the applicant's request for an upgrade of his under honorable conditions (General) discharge on 25 September 1987. The Board denied his request upon finding the separation was both proper and equitable.

13. Soldiers may be separated under the provision of AR 635-200, Chapter 13, when it is determined that they are unqualified for further military service because of unsatisfactory performance.

14. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

#### 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 no error or injustice existed to warrant an upgrade to honorable. The applicant provided no evidence of post-service achievements or letters in support of a clemency determination. The Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

2. The Board found the applicant's service record exhibits numerous instances of unsatisfactory job performance and conduct. Evidence shows he failed to meet the standards required to be a productive member of the United States Army. The applicant accepted nonjudicial punishment on several occasions and was discharged for unsatisfactory performance. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an honorable characterization of service. Therefore, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

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. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 13 of this regulation provides for separation due to unsatisfactory performance when, in the commander's judgment, the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.

b. 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.

c. 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.

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/NR) 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. 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//