

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2024

DOCKET NUMBER: AR20240000097

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- DD Form 214 (Report of Separation from Active Duty), for the period ending 2 November 1978

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:

a. He did not get his general education diploma (GED). The Army repeatedly did not fulfill their promise, he stopped fulfilling his obligation. He was put in school for his GED three times. The first time halfway through he was pulled out for the field. He was told the next time would be permanent. The second and third time he was pulled again for the field. Due to that, he stopped going to physical training. He was called in front of the captain, and he told him what was happening. The captain asked him if he wanted to be removed from the Army and he agreed to be removed.

b. Another time, a sergeant asked him to fix his truck. While he was working on the sergeant's truck, a different sergeant asked him to fix his truck and abandon the current job because his truck was more important. Him being a private, he obeyed orders and this caused an issue with the original sergeant who asked him. Situations like this happened very frequently. Furthermore, the recruiter promised him a lot and delivered on nothing. Shame on him for finding out the hard way. He should have put it

all in writing. He wants to have his funeral taken care of. He does not want to be a burden to anyone.

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

a. On 12 May 1977, the applicant enlisted in the Regular Army.

b. The applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on the following dates for the following misconduct –

- On 22 November 1977, for being derelict in the performance of his duties as a platoon barracks guard, on or about 13 November 1977
- On 29 September 1978, for failure to be at the time prescribed to his appointed place of duty for physical training, on or about 20 September 1978; his punishment included reduction to the rank/grade of private/E-2
- On 20 October 1978, for failure to be at the time prescribed to his appointed place of duty for physical training, on or about 16 October 1978; his punishment included reduction to the rank/grade of private/E-1

c. On 19 October 1978, the applicant was counseled on the basis of contemplated action to accomplish his separation under the provisions of paragraph 5-31 (Expeditionary Discharge Program (EDP)), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). The applicant understood that he may expect to encounter substantial prejudice in civilian life. He understood that he may, up until the date the discharge authority orders, directs, or approves his discharge, withdraw this waiver. He voluntarily consented to the separation and elected not to submit a statement in his own behalf.

d. The applicant underwent a command referred mental status evaluation on or about 23 October 1978. The relevant DA Form 3822-R (Report of Mental Status Evaluation) shows he was psychiatrically cleared for any administrative action deemed appropriate by command.

e. The applicant's record is void of the complete separation packet containing the specific facts and circumstances surrounding his discharge processing. However, on 2 November 1978, the applicant was discharged. His DD Form 214 shows he was separated under the provisions AR 635-200, paragraph 5-31, separation code JGH, reentry code 3. He completed 1 year, 5 months, and 21 days of active service. He was awarded or authorized the Expert Marksmanship Qualification Badge with Rifle Bar (M-16).

4. 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:**

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 her characterization of service. Upon review of the applicant's petition and available military record, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the pattern of misconduct. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination.

2. 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. Furthermore, 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. 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.

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
  - 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. Paragraph 5-31 provided for the discharge of enlisted personnel who had completed at least six months but less than 36 months of active duty and who had demonstrated that they could not or would not meet acceptable standards required of enlisted personnel in the Army because of the existence of one or more of the following conditions: poor attitude, lack of motivation, lack of self-discipline, inability to adapt socially or emotionally, or failure to demonstrate promotion potential. No individual would be discharged under this program unless the individual voluntarily consented to

the proposed discharge. Individuals discharged under this provision of the regulation were issued either a general or honorable discharge.

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.

4. Army Regulation 15-185 (ABCMR) states 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.

//NOTHING FOLLOWS//