

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 September 2024

DOCKET NUMBER: AR20240000935

APPLICANT REQUESTS:

- in effect, an upgrade of his under other than honorable conditions discharge to general, under honorable conditions
- 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)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 17 August 1982

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 in effect, he is requesting an upgrade of his under other than honorable conditions discharge to general, under honorable conditions.

a. He was told after 6 months his discharge would change to honorable, just by signing the documents presented to him at the time of his discharge. This was not the case as 39 years later he has yet to see a change in his discharge. He has been receiving healthcare from the VA and needs disability recognition and compensation due to his mental and physical health from his time served.

b. He served 7 years and 2 months and his goal was to serve 20 years and retire from the Army. Due to circumstances out of his control, his rank was dropped from sergeant to private due to a misunderstanding with his roommate who happened to be under cover police. It had to do with possession of a clip of ammunition that he took

from a private. He was the ammunition sergeant, and he took control of his ammunition and still had it in his possession, 8 rounds of a cost of about \$8.10.

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

a. On 22 June 1977, he enlisted in the Regular Army for a period of 4 years. He was awarded military occupational specialty 11B (Infantryman) and he attained the grade/pay grade of sergeant (SGT)/E-5.

b. On 21 December 1980, he was honorably discharged for the purpose of reenlistment.

c. On 22 December 1980, he reenlisted for 6 years beginning at grade/pay grade SGT/E-5.

d. On 19 January 1981, he accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for failure to obey a lawful order. His punishment consisted of reduction to specialist/E-4 (suspended for 3 months) and forfeiture of \$337.00 pay for 1 month.

e. On 24 June 1982, the U.S. Army Criminal Investigation Command, Fort Knox, issued a preliminary Report of Investigation (ROI) Number 0531-XX-CIDXXX-XXXXX, establishing a basis for disciplinary or administrative actions against the applicant for allegations of wrongful possession and transfer of marijuana and larceny. The ROI contains two Agent Investigation Reports reflecting the applicant transferred 0.33 gram of marijuana to a confidential informant on 27 May 1982, and the applicant sold to a confidential informant 30 rounds of M-16 ammunition for \$10.00. The ROI contains a sworn statement, a CID laboratory report, and a certificate of authentication.

f. A DD Form 458 (Charge Sheet) shows on 6 July 1982, court-martial charges were preferred against the applicant for the following:

(1) two specifications of violation of Article 134 of the UCMJ:

- on 27 May 1982, wrongful possession of .33 grams, more or less of marijuana
- on 27 May 1982, wrongful transfer of .33 grams, more or less of marijuana

(2) violation of Article 121 of the UCMJ: while at Fort Knox on 16 June 1982, steal 23 rounds of M-16 5.56 mm tracer ammunition of a value of about \$8.40, property of the U.S. government; and

(3) violation of Article 108 of the UCMJ: without proper authority, while at Fort Knox on 16 June 1982, dispose of by selling to PFC WBD____, 23 rounds of M-16 5.56mm tracer ammunition of a value of about \$8.40, property of the U.S. government.

g. After consulting with legal counsel on 20 July 1982, the applicant voluntarily requested discharge for the good of the service, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a Veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life
- he elected not to submit matters on his own behalf
- he indicated he did not desire a physical examination prior to separation

h. On 21 July 1982, the U.S. Army Armor Center and Fort Knox Staff Judge Advocate recommended the Commanding General refer the charges and their specifications to trial by Special Court-Martial empowered to adjudge a bad conduct discharge.

i. On 29 July 1982, the applicant's commanding officer, and his intermediate commanders recommended approval of his request for discharge.

j. On 4 August 1982, the Commanding General, U.S. Army Armor Center and Fort Knox, approved his request for discharge, under the provisions of Chapter 10, Army Regulation 635-200, for the good of the service. He directed issuance of an Other Than Honorable Conditions Discharge Certificate and that he be reduced to private (PV1)/E-1 in accordance with Army Regulation 635-200.

k. On 17 August 1982, he was discharged with an under other than honorable conditions discharge. His DD Form 214 shows he completed 5 years, 1 month, and 26 days of active service with no lost time. He was assigned separation code JFS and the narrative reason for separation listed as "Administrative Discharge Conduct Triable by Court-Martial," with reentry code 3C, 3. It also shows he was awarded or authorized:

- Army Service Ribbon
- Army Commendation Medal
- Overseas Service Ribbon
- Army Good Conduct Medal
- Army of Occupation Medal
- Expert Marksmanship Qualification Badge with Rifle (M-16) and Hand Grenade Bars
- NCO Professional Development Ribbon (Primary Level)

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

7. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

8. 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 partial relief was warranted. The Board carefully considered counsel's statement, 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 determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board noted the applicant provided no character letters of support or post service achievements 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 to a general under

honorable conditions discharge. However, during deliberation the Board determined the applicant had a prior period of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service by granting a partial relief to correct his records..

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:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 17 August 1982 by adding the following entries in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 770622 UNTIL 801221

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an upgrade of his under other than honorable conditions discharge to general, under honorable conditions.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent

evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 1-13 provided:

(1) 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. Only the honorable characterization may be awarded a member upon completion of his/her period of enlistment or period for which called or ordered to active duty or active-duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

b. Chapter 10 stated a member who has committed an offense or offenses, the punishment of which under the UCMJ and the Manual for Court Martial, 1969 (Revised Edition) 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 member, or, where required, after referral, until final actions by the court-martial convening authority.

(1) A medical examination is not required but may be requested by the member under Army Regulation 40-501 (Medical Services – Standards of Medical Fitness), chapter 10. A member that requests a medical examination must also have a mental status evaluation before discharge.

(2) Commanders will insure that a member will not be coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. Consulting counsel will advise the member concerning:

- the elements of the offense or offenses charged
- burden of proof
- possible defenses
- possible punishments
- provisions of Chapter 10
- requirements of voluntariness
- type of discharge normally given under provisions of Chapter 10
- rights regarding the withdrawal of the member's request\
- loss of Veterans Administration benefits
- prejudice in civilian life because of the characterization of the discharge

(3) The separation authority will be a commander exercising general court-martial jurisdiction or higher authority. However, authority to approve discharges in cases in which a member has been AWOL for more than 30 days and has been dropped from the rolls of his or her unit as absent in desertion, and has been returned to military control, may be delegated to the commander exercising special court-martial convening authority over the member.

(4) An under other than honorable discharge certificate normally is appropriate for a member who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate if such is merited by the member's overall record during the current enlistment.

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/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//