

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 September 2024

DOCKET NUMBER: AR20240001050

APPLICANT REQUESTS:

- reconsideration of his prior request for an upgrade of his under other than honorable conditions 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)
- Self-Authored Statement

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's cases by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AR20190002301 on 30 July 2019 and AR20190014350 on 22 December 2020.

2. The applicant states he is requesting reconsideration of his previous requests for an upgrade of his discharge. He has pleaded with the Board three previous times and would like to be seen in person to plead his case. He is turning 62 years old and apologizes for his mistakes. He would like a hearing before his peers to defend himself in person. He made many mistakes, but when it came to his squad, they were the best. He would like a change in his discharge before he dies to share with his daughter his accomplishments. He pleads for the Board's help.

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

- a. He enlisted in the Regular Army on 13 November 1979.
- b. His DA Form 2-1 (Personnel Qualification Record) shows he completed foreign service in Germany from 4 October 1981 through 7 November 1982.

c. He accepted nonjudicial punishment on three occasions:

- 25 February 1981 – for one specification of failure to go to his appointed place of duty
- 9 December 1981 – for one specification of being disrespectful in language toward a superior commissioned officer and one specification of being disrespectful in language toward a noncommissioned officer; his punishment included reduction to private, E-2 and forfeiture of \$139.00 for one month, suspended for 180 days
- 30 March 1982 – vacation of his suspension of forfeiture of \$139.00 for one month, referenced continuation sheet was not available

d. On 30 June 1982, a DD Form 458 (Charge Sheet) shows court-martial charges were preferred on the applicant for being absent without leave (AWOL) from 30 March 1982 to 17 June 1982.

e. On 1 July 1982, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). 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 apply to the Army Discharge Review Board or the ABCMR for a review of discharge
- he may expect to encounter substantial prejudice in civilian life
- he elected to submit a statement on his behalf

f. He submitted a statement to the separation authority on his own behalf which stated:

- he could no longer adjust to the military and be away from his baby at the same time
- he believed he could do better for his family in the civilian sector and had a job waiting for him

- he believed if he had not been sent to Germany he would have been alright
- he did not desire to complete his enlistment or face trial by court-martial
- his mother had several nervous breakdowns and if he was placed in confinement, he did not believe she would make it

g. On 8 July 1982, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge for the good of the service. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

h. On 23 July 1982, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years, 5 months, and 24 days of active service with 79 days of lost time. The narrative reason for separation is listed as "Administrative Discharge – Conduct Triable by Court-Martial." It also shows he was awarded or authorized:

- Humanitarian Service Medal
- Army Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade

4. 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.

5. On 30 July 2019, the ABCMR rendered a decision in Docket Number AR20190002301. The Board considered the applicant's statement regarding post-service achievements but found no additional letters of reference or post-service achievements in support of clemency. The Board found insufficient mitigating factors for the misconduct and did not find clemency was warranted. The Board determined the character of service the applicant received at separation was not in error or unjust.

6. On 6 April 2020, the ABCMR rendered a decision in Docket Number AR20190014350. The Board found insufficient evidence of in-service mitigating factors for the misconduct and the applicant provided insufficient evidence of post-service achievements or letters of support to weigh a clemency determination. Based on a preponderance of evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

7. 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.

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

9. 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. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. The Board again carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and the applicant provided insufficient evidence of post-service achievements and no letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Numbers AR20190002301 on 30 July 2019 and AR20190014350 on 22 December 2020.

3/4/2025

XCHAIRPERSON


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 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.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service and/or in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged 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 (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//