

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 September 2024

DOCKET NUMBER: AR20240001158

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) discharge to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 is requesting a change of his under honorable conditions discharge (general) to honorable. He has found that certain things he wants to do requires him to have an honorable discharge status.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 9 May 1973.
 - b. The applicant accepted non-judicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on two separate occasions between 19 December 1973 and 7 May 1974 for the following offenses:
 - disobeying a lawful order from his superior noncommissioned officer
 - being disrespectful in language towards his superior noncommissioned officer
 - disobeying a lawful order from his superior commissioned officer
 - c. An undated and unsigned DA Form 3822-R (Report of Mental Status Evaluation) shows the applicant had the mental capacity to understand and participate in board proceedings.

d. The applicant's commander notified the applicant on 22 October 1974 that actions had been initiated to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13, for unsuitability. He acknowledged receipt on the same day. The reasons for his proposed action were:

- his disciplinary record of violations of the UCMJ
- his disregard for maintaining proper uniform and personal standards
- his continued irresponsible attitude toward his superiors and inability to accept responsibility
- the inordinate amount of time his superiors are required to take to have him meet only minimum standards
- his inability to obey lawful orders

e. On 22 October 1974, after consulting with counsel, he acknowledged:

- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he may be ineligible for many or all benefits as a Veteran under both Federal and State laws

f. On 22 October 1974 the applicant's commander formally recommended his separation from service under the provisions of Army Regulation 635-200, Chapter 13-5b (3), for unsuitability. The intermediate commander recommended approval.

g. The separation authority approved the applicant's discharge on 22 November 1974, under the provisions of Army Regulation 635-200, paragraph 13-5b (3), and directed the issuance of a DD Form 257A (General Discharge Certificate).

h. On 3 December 1974, he was discharged from active duty. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of chapter 13 of AR 635-200 with a general, under honorable conditions characterization of service. He completed 1 year, 6 months, and 23 days of active service.

4. By regulation (AR 635-200), action will be taken to separate an individual for unsuitability when it is clearly established that it is unlikely that he will develop sufficiently to participate in further military training and/or become a satisfactory Soldier.

5. 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:

The Board 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 no evidence of post-service achievements or 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 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 635-200 (Personnel Separations - Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel.

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

c. Paragraph 13, in effect at the time, states action will be taken to separate an individual for unsuitability when it is clearly established that it is unlikely that he will develop sufficiently to participate in further military training and/or become a satisfactory Soldier.

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 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//