

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 September 2024

DOCKET NUMBER: AR20240001166

APPLICANT REQUESTS: reconsideration of his previous requests for an upgrade of his characterization of service from under other than honorable conditions.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 293 (Application for the Review of Discharge)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AR2000050028 on 1 August 2001.

2. As a new contention, the application states:

a. He takes full responsibility for all his actions which resulted in his under other than honorable conditions discharge. Over time he learned he should have allowed the court-martial hearing so he could have explained what happened that evening in Germany. He was fearful for his safety and acted in self-defense. He was a good Soldier then and an even better person today.

b. Since his discharge in 1983, he has successfully raised four children and retired from a rewarding 20-year career, working for the Veteran's Administration. He believes he has lived the kind of life that is reflective of the type of person he is and what the military taught him that he applied. He appreciates consideration in this matter.

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

a. The applicant enlisted in the Regular Army on 2 October 1975.

b. The applicant on 23 June 1978 reenlisted.

c. His DA Form 2-1 (Personnel Qualification Record – Part II) shows in item 5 (Overseas Service) service in:

- Germany from 6 February 1976 to 21 September 1978 and from 12 November 1982 to 25 October 1983
- Korea from 5 June 1980 to 2 June 1981

d. His DA Form 2-1 also shows in item 18 (Appointments and Reductions):

- private (PVT)/E-1: 2 October 1975
- private (PV2)/E-2: 2 February 1976
- private first class (PFC)/E-3: 27 August 1976
- (PVT)/E-2: 6 December 1976
- (PFC)/E-3: 20 May 1977
- specialist (SPC)/E-4: 2 June 1978
- sergeant (SGT)/E-5: 10 June 1980
- (SPC)/E-4: 17 September 1980
- (SPC)/E-4: (A) 14 January 1981
- (SGT)/E-5: 6 February 1982

e. The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on two separate occasions on/for:

- wrongfully purchasing more than the monthly dollar and quantity limitation imposed by ration control on 18 November 1980
- assaulting a noncommissioned officer and a Korean National on 14 January 1981. His punishment consisted of reduction to specialist/E-4

f. On 9 September 1983, court-martial charges were preferred against the applicant for assaulting a private/E-2, wrongfully communicating a threat to injure the private, and wrongfully and lawfully endeavoring to impede and influence an investigation.

g. On 28 September 1983, the applicant, through counsel, submitted a request for discharge for the good of the service-in lieu of trial by court-martial under the provisions of Chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:

- he was making the request of his own free will and had not been subjected to any coercion whatsoever by any person
- by submitting the request for discharge, he acknowledges that he is guilty of the charge against him or of a lesser included offense
- under no circumstances did he desire further rehabilitation, for he had no further desire to perform military service
- if his request for discharge was accepted, he may be discharged under conditions other than honorable

- he would be deprived of many or all Army benefits, that he may be ineligible for many, or all benefits administered by the Veteran's Administration and that he may be deprived of his rights and benefits as a veteran under both Federal and State law
- he elected not to submit a statement

h. The intermediate commanders on 4 October 1983 recommended disapproval of his request for discharge under the provisions of chapter 10, AR 635-200 and that he be tried by general court-martial.

i. On 6 October 1983, the separation authority approved the applicant's discharge for the good of the service. He directed the applicant receive a discharge under other than honorable conditions.

j. On 17 October 1983, the applicant underwent a medical and mental status examination. His DA Form 3822-R (Report of Mental Status Evaluation) shows he had no significant mental illness and had the mental capacity to understand and participate in board proceedings. He was psychiatrically cleared for administrative separation.

k. On 26 October 1983, he was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 5 years, 4 months, and 4 days of active service. It also shows in:

- item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, Overseas Service Ribbon, Non-Commissioned Officer Development Ribbon (2), Expert Infantryman Badge, Good Conduct Medal, Marksman Marksmanship Qualification Badge with Rifle Bar (M-16) and the Expert Badge with .45 Caliber Pistol Bar
- item 24 (Character of Service): under other than honorable conditions
- item 25 (Separation Authority): Chapter 10, AR 635-200
- item 26: KFS
- item 27 (Reenlistment Code): 3
- item 28 (Narrative Reason for Separation): For the Good of Service – In Lieu of Court-Martial

4. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his service characterization. The ADRB considered his request on 16 April 1987, determined after careful consideration of his military records and all other available evidence, that he was properly discharged and denied his request for relief.

5. The applicant petitioned the ABCMR for an upgrade of his service characterization. The ABCMR considered his request on 1 August 2001, determined the applicant failed

to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice.

6. By regulation, a member who has committed an offense or offenses, the punishment for any of which, under the Uniform Code of Military Justice, includes a bad conduct 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.

7. 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:

After reviewing the application and all supporting documents, to include DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the serious and some violent behavior which led to the applicant's separation, as well as the lack of any mitigation and/or clemency evidence provided by the applicant, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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), in effect at the time, prescribes the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states 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.

b. Paragraph 3-7b (General Discharge) states 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.

c. Chapter 10 (Discharge in Lieu of Trial by Court-Martial) states a Soldier who has committed an offense or offense, the punishment for which, under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged for he good

of the service. However, the separation authority may direct a General Discharge Certificate if such is merited by the Soldier's overall record during the current enlistment.

3. AR 600-200 (Enlisted Personnel Management System), in effect at the time, prescribes policies and procedures for career management of Army enlisted personnel. Paragraph 8-11 (Approved for Discharge from Service Under Other Than Honorable Conditions) states when the general court-martial authority determines that a Soldier is to be discharged from the service under other than honorable conditions, he will be reduced to the lowest enlisted grade. Board action is not required for this reduction. The commander having general court-martial jurisdiction will, when directing a discharge under other than honorable conditions, or when directed by higher authority, direct the Soldier be reduced to private, E-1.

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//