

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 September 2024

DOCKET NUMBER: AR20240001179

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions to honorable
- a personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter, 29 August 2023
- Certificate of Appreciation, 6 June 1979
- DA Form 348 (Equipment Operator's Qualification Record), 19 October 1979
- Letter of Appreciation, 23 August 1981
- Two Certificate of Training, 21 March 1980 and 29 January 1982
- Two Memorandums, 15 June 1982
- Certificate of Completion, 30 November 1982
- National Personnel Records Center

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 joined the Army National Guard in 1977. He wanted to join the Regular Army in 1978. He was told he could not and the only way he could go in the Regular Army is if he missed three meetings. He missed three meetings and lost his rank and everything to go into the Regular Army. He was transferred to Fort Bragg, NC and served time in field artillery. His paperwork shows he served as a cook, but he was never a cook. He worked with the howitzers and ammunition. He made rank quickly while he was stationed there. In that short time, he went to the E-5 board. When he reenlisted, they sent him to Fort Leonard Wood, MO for truck driving school. He finished three weeks

ahead of schedule and then he was transferred to Fort Carson, CO, then transferred to Germany. Every base he went to he received Letters of Recommendations for doing a good job.

b. He received a Letter of Recommendation a month before he was court martialed. He knows he made a bad mistake, but he paid dearly for that mistake, and he knows it was wrong. First, they took him off the E-5 list, took his rank away court-martialed him and sent him to jail for 10 days. On the 10th day instead of releasing him, they sent him to Fort Riley, KS for retraining, Brigade, you can check his files there. He did as good there as he did at any base. He tore his Achilles heel there and had to finish on one leg because he did not want to restart the retraining. He graduated but, it was his choice to get out of the Army. He felt like he was punished unfairly for his one and only infraction. That is why he did not reenlist.

3. The applicant provides:

a. A Certificate of Appreciation for his participation in the Special Olympics Program, 6 June 1979.

b. A DA Form 348 (Equipment Operator's Qualification Record), which shows his qualifications in several types of equipment during the period August to October 1979.

c. A Certificate of Training which shows his completion of Basic Leadership Course for the period 7 to 21 March 1980.

d. A Letter of Appreciation issued by the Commanding Officer for the 360th Transportation Company, 23 August 1981, for the applicant's outstanding TA-50 layout inspection.

e. A Certificate of Training which shows his completion of German HeadStart Orientation.

f. Two memorandums issued by his Commanding Officer and W\_\_\_\_ F\_\_\_\_ Chief of the vehicle publications branch, 15 June 1982, which show the applicant's initiative and technical expertise was applauded. The memos further state the applicant's recommendation to change the field manual could save a Soldier's life and thousands of dollars in property damage.

g. A Certificate of Completion, issued by the Army Retraining Brigade in Fort Riley KS, 30 November 1982, shows during the seven-week training program, the applicant proved his tenacity and mettle while being intensively challenged both mentally and physically.

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

a. The applicant enlisted in the Army National Guard. He was ordered to active-duty training (ADT) on 20 March 1977 and completed training for award of military occupational specialty (MOS) 94B (Food Service Specialist).

b. On 7 July 1977 the applicant was honorably released from ADT.

c. On 30 March 1979, the applicant was involuntarily ordered to active-duty military service with 139th Field Artillery Battalion, in Fort Bragg, NC for 19 months and 10 days.

d. His DA Form 2-1 (Personnel Qualification Record) shows in:

(1) item 18 (Appointments and Reductions), the applicant was promoted to private/E-2, effective 16 January 1979; private first class/E-3, effective 1 August 1979; and specialist/E-4, effective 1 June 1980.

(2) item 35 (Record of Assignments):

- the applicant was reassigned to Fort Carson, CO, for advance individual training (AIT), from 5 November 1980 to 11 November 1981; he was awarded the MOS, 64C, (Motor Transport Operator)
- the applicant was reassigned to Germany, from 12 November 1981 to 4 October 1982
- the applicant was reassigned to Fort Riley, KS, from 5 October 1982 to 10 December 1982

e. The applicant's immediate commander notified him of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), paragraph 13, for unsatisfactory performance. His commander's rationale for the proposed action was due to the applicant receiving a court-martial. He further states based on his past performance, it does not seem likely that the individual will discontinue his disruptive influence nor overcome the deficiencies giving rise to this recommendation.

f. On 24 November 1982, the applicant acknowledged receipt of his commander's intent to initiate separation action against him for unsatisfactory performance. He consulted with counsel who advised him of the basis for the contemplated action to separate him for unsatisfactory performance under AR 635-200, Chapter 13, and its effect; of the rights available to him; and the effect of any action taken by me in waiving his rights. He declined making a statement on his own behalf. He acknowledged:

- he understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he understood that, as the result of issuance of a discharge under other than honorable conditions, he may be ineligible for many or all benefits as a veteran under both Federal and State laws and that I may expect to encounter substantial prejudice in civilian life
- he understood that if he received a discharge/character of service, which is less than honorable, he may make application to the Army Discharge Review Board or the Army Board for Correction of Military Records for upgrading; however, an act of consideration by either board does not imply that his discharge will be upgraded

g. Subsequent to the applicant's acknowledgement, his immediate commander-initiated separation action against him under chapter 13 of AR 635-200 for unsatisfactory performance. The commander opined that he has reviewed the applicant's military record. While the applicant has completed most requirements at USARB, it is unlikely that he will reach his expired term of service date with an honorable discharge. The immediate commander recommended a general, under honorable conditions discharge.

h. The separation authority approved his discharge under the provision of paragraph 13 of AR 635-200 and directed the issuance of a general discharge. The applicant was accordingly discharged on 10 December 1982.

i. His DD Form 214 show he was discharged under the provisions of chapter 13-4c(2) of AR 635-200 for unsatisfactory performance with a general, under honorable conditions characterization of service with Separation Code JMJ and Reenlistment Code 3B. He completed 2 years, 6 months, and 25 days of active service. His DD Form 214 shows:

- his rank and pay grade as PV1 and E-1
- his primary MOS as 94B, and secondary MOS as 64C
- he was awarded or authorized the Expert Marksmanship Qualification Badge with Rifle Bar, and the Army Service Ribbon
- dates of time lost during this period is from 1 October 1982 to 14 October 1982

j. A DD Form 215 (Correction to DD Form 214) issued on 11 July 2022, which shows in item 5 (Date of Birth), delete: xx1019 and add: 19 October 19xx.

5. By regulation (AR 635-200), chapter 13 provides that separation action be taken when in the commander's judgment the individual will not develop sufficiently to participate satisfactorily in further military training and/or become a satisfactory Soldier.

Service of Soldiers separated because of unsatisfactory performance under this regulation is characterized as honorable or under honorable conditions.

6. 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. The Board determined 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.

2. 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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The evidence of record shows the applicant's performance was unsatisfactory as evidenced by his frequent negative counseling, and his court-martial conviction, as indicated by his commander. As a result, his chain of command initiated separation action against him for unsatisfactory performance and he was separated with a general, under honorable conditions discharge. The Board found no error or injustice in his separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that 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.

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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. Chapter 13 of this regulation provides for separation due to unsatisfactory performance when, in the commander's judgment, the individual will not become a

satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.

b. 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.

c. 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.

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. 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 (Army Board for Correction of Military Records), paragraph 2-11, shows applicant's 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//