

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 September 2024

DOCKET NUMBER: AR20240001225

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) characterization of service 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 making this request for job purposes and Department of Veterans Affairs (VA) benefits.
3. Prior to the period of service under review, the applicant enlisted in the U.S. Army Reserve and served in an active-duty status from 1 January to 26 June 1982. He was awarded military occupational specialty 31M (Tactical Circuit Controller), issued a DD Form 214 for this period of service, and he was released to his unit.
4. On 18 February 1986, he enlisted in the Regular Army for 4 years, he completed the training requirements, and he was awarded military occupational specialty 62B (Construction Equipment Repairer). On 16 May 1986, he was assigned to Fort Benning, GA, with duties in this military occupational specialty.
5. The applicant was counseled on 14 occasions between 16 September 1986 and 29 January 1987, for various reason, including: missing work call formation; writing checks and failing to maintain insufficient funds in his account to cover those checks on more than one occasion; failing to report to his place of duty at the time prescribed; financial counseling; failing to keep his supervisor informed of his whereabouts; failing to follow a lawful directive; failing to follow an order to move back into the barracks;

failing to maintain a clean and proper uniform; less than satisfactory performance; and for his military bearing and personal appearance being below standards.

6. On 8 January 1987, the applicant underwent a mental status evaluation at the commander's request. The evaluating official found his behavior was normal, he was fully alert, fully oriented, and his mood or affect were unremarkable, his thinking process was clear, his thought content was normal, and his memory was good. He met retention standards under the provisions of chapter 3, Army Regulation 40-501 (Standards of Medical Fitness). His mental status evaluation was within normal limits with no apparent thought disorder noted. He was cleared for administrative action deemed appropriate by his chain of command.

7. On 14 January 1987, a bar to reenlistment certificate was initiated against the applicant because his chain of command was being called repeatedly about him writing bad checks. He had been counseled verbally several times for check writing. The bar to reenlistment reiterates that he was counseled for the following reason on:

- 16 September 1986, for missing Army physical fitness training formation
- 17 December 1986, for disobeying an order to return to work
- 17 December 1986, for failure to report to his place of duty
- 6 January 1987, for leaving his place of duty without permission
- 7 January 1987, for missing two appointments
- 7 January 1987, for a final time about his substandard actions and performance

8. On 14 January 1987, the applicant declined to appeal the bar to reenlistment.

9. On 27 January 1987, he accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice, for failure to obey a lawful order given by a warrant officer to go to his finance appointment. His punishment consisted of reduction from pay grade E-2 to pay grade E-1, a forfeiture of \$149.00 pay, (suspended for 90 days), and 14 days of extra duty. He did not appeal the punishment.

10. On 13 February 1987, his commander notified him that he was initiating action to separate him under the provisions of chapter 13, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), for unsatisfactory performance prior to the expiration of her term of service with a general discharge. The commander stated his proposed action was based on substandard conduct adversely impacting military discipline. He was advised of his rights. The applicant acknowledged receipt of this notification on the same date.

11. The applicant acknowledged he had been advised by consulting counsel of the basis for the contemplated action to separate him under the provisions of chapter 13, Army Regulation 635-200, for unsatisfactory performance. Additionally, he acknowledged he had been advised by consulting counsel and understood:

- the basis for the contemplated action to accomplish his separation for unsatisfactory performance and its effects
- the rights available to him
- the effect of any action taken by him in waiving his rights
- he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him
- he could make application to the Army Discharge Review Board (ADRB) or the ABCMR for a discharge upgrade, but there was no implication his discharge would be upgraded
- he declined to submit statements in his behalf

12. The applicant's commander recommended that he be separated from the Army prior to the expiration of his term of service under the provisions of chapter 13, Army Regulation 635-200, due to unsatisfactory performance. The commander stated the specific factual reasons for the recommendation were: His substandard conduct adversely impacted his military discipline, good order, and morale. His disruptive influence was expected to continue, and he had no potential for further productive service.

13. The appropriate authority waived the requirement for a rehabilitative transfer and directed the applicant's separation under the provisions of chapter 13, Army Regulation 635-200, due to unsatisfactory performance with a general discharge under honorable conditions.

14. On 24 February 1987, he was released from active duty in pay grade E-2 with an under honorable conditions (general) character of service and transferred to the U.S. Army Reserve Control Group Reinforcement. His form also shows his discharge was affected under the provisions of chapter 13, Army Regulation 635-200, by reason of unsatisfactory performance, with a separation code of "LHJ" and a reenlistment code of "3, 3C." He completed 1 year and 7 days of net active service this period. He was awarded the Army Service Ribbon and Marksman Marksmanship Qualification Badge Rifle (M-16). His DD Form 214 shows in:

15. The ABCMR does not grant requests for the correction of records solely for making an applicant eligible for veterans or other benefits. The Board decides cases individually based upon its merits when an applicant requests a correction to the military record.

16. Army Regulation 635-200, in effect at the time, set forth the basic authority for the administrative separation of enlisted personnel. Service of Soldiers separated because of unsatisfactory performance was characterized as honorable or under honorable conditions. An honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would have been clearly inappropriate.

17. The applicant provided argument or evidence that the Board should consider in accordance with the published equity, injustice, or clemency determination guidance.

**BOARD DISCUSSION:**

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, for missing formation, disobeying an order, failure to report to his place of duty, leaving his place of duty, and overall substandard performance. He also received an NJP and had a bar to reenlistment. 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), in effect at the time, set forth the basic authority for the administrative separation of enlisted personnel.

a. Chapter 13 provided for separation of individuals due to unsatisfactory performance when, in the commander's judgment:

- the individual would not become a satisfactory Soldier
- retention would have an adverse impact on military discipline, good order, and morale
- the service member would be a disruptive influence in the future
- the basis for separation would continue or recur
- the ability of the service member to perform effectively in the future, including potential for advancement or leadership, was unlikely

b. Service of Soldiers separated because of unsatisfactory performance was characterized as honorable or under honorable conditions.

c. An honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would have been clearly inappropriate.

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 on the basis of 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//