

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 August 2024

DOCKET NUMBER: AR20240001284

APPLICANT REQUESTS: an upgrade of his general, under honorable conditions 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 an upgrade of his general, under honorable condition to honorable to allow him to receive healthcare benefits.
3. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 16 September 1986.
  - b. He accepted nonjudicial punishment on 31 August 1988 for one specification being absent without leave (AWOL) from on or about 1 July 1988 to on or about 5 July 1988. His punishment included reduction to private first class (PFC), E-3.
  - c. He accepted nonjudicial punishment on 14 October 1988 for one specification of breaking restriction and two specifications of failing to go to his appointed place of duty. His punishment included reduction to private (PV2), E-2. The applicant appealed the punishment and on 17 October 1988, the appellant authority denied his appeal.
  - d. A DA Form 3822-R (Report of Mental Status Evaluation), dated 10 January 1989, confirmed the applicant was referred for a mental evaluation due to consideration for separation. The applicant was cleared for any administrative action deemed appropriate by the Command.

e. An extract of Standard Form 88 (Report of Medical Examination) shows on 22 February 1988 the applicant underwent a medical examination for the purpose of administrative separation and the clinical evaluation was marked normal. The second page with signature is unavailable for review by the Board.

f. On 28 December 1988, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 13, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) for unsatisfactory performance. The specific reasons for his proposed recommendation was for his continued unsatisfactory performance and unwillingness to improve. He acknowledged receipt of the notification on 29 December 1988.

g. On 29 December 1988, after consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he is ineligible to apply for enlistment in the Army for 2 years after discharge
- he elected to submit matters

h. A memorandum dated 3 January 1989, shows the applicant requested not to be separated because he believed that it would not be in his best interest. He admitted to his mistakes and believed he had learned from them. He noted that he had not received any negative counselings statements since the incident in October and further believed his chain of command would admit his duty performance had improved. Since the incident, he had his marriage annulled because he believed the marriage was the source of his problems. He was able to focus on his military duties. He acknowledged he received two Article 15s but felt he paid the price and asked that his conduct since October be taken into consideration. He believed he could be an asset to the Army.

i. On 2 March 1989, the immediate commander-initiated separation action against the applicant for his unsatisfactory performance. He recommended that his period of service be characterized as general, under honorable conditions.

j. On 21 March 1989, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 13, AR 635-200, for unsatisfactory performance. He would be issued a general, under honorable conditions discharge.

k. On 26 April 1989, he was discharged from active duty with a general, under

honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years, 7 months, and 6 days of net active service with 5 days of lost time. He was assigned separation code JHJ and the narrative reason for separation listed as "Unsatisfactory Performance." with reentry code 3, 3B, and 3C. It also shows he was awarded or authorized:

- Army Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle Bar (M16)

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. By regulation, (AR 635-200) a member may be separated when it is determined that he or she is unqualified for further military service because of unsatisfactory performance. The service of members separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military record.

6. 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. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period of 2 years, 7 months, and 6 days of net active service with 5 days of lost time.

2. The Board found insufficient evidence of in-service mitigating factors to overcome the applicant's various misconduct. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board noted, the applicant was discharged for unsatisfactory performance and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct

and performance of duty for Army personnel to receive an Honorable discharge. Therefore, the Board denied relief.

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.

3. 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. Paragraph 3-7a (Honorable Discharge) states 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. Chapter 13 of the regulation states a member may be separated when it is determined that he or she is unqualified for further military service because of unsatisfactory performance. The service of members separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military record.

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//