

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 October 2024

DOCKET NUMBER: AR20240001301

APPLICANT REQUESTS: Reconsideration of his previous request for upgrade of his under other than honorable conditions discharge, and a different narrative reason for separation.

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

- DD Form 149 (Application for Correction of Military Record), 11 December 2023
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 11 December 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 28 February 1983
- Veterans Administration (VA) Rating Decision Letter, page 3 only, dated 12 September 2023
- VA Application for Claim, 4 December 2023
- email, 2023 verification of military service

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 Number AR20080008996 on 7 October 2008.
2. The applicant states he was told his discharge would be upgraded in 6 months. It has been 40 years. That's like serving a life sentence for stealing a candy bar. He served honorably. He was looking for his family. The Army has his records. He is indigent and has a fixed income.
3. The applicant provided copies of:
 - a. Page 3 of a VA Rating Decision Letter providing him instruction on how to file a claim.
 - b. An application for a VA claim for disability compensation benefits.

- c. An email he sent to the VA confirming his military service.
- 4. A review of the applicant's service records shows:
 - a. On 17 November 1977, he enlisted in the Regular Army for 3 years. He reenlisted on 30 June 1980 for 4 years in the rank/grade of specialist 4 (SP4)/E-4.
 - b. On 27 July 1980, he was promoted to sergeant/E-5.
 - c. He accepted nonjudicial punishment (NJP) under the provisions or Article 15 of the Uniform Code of Military Justice (UCMJ):
 - (1) On 8 May 1981, field grade NJP for missing movement on 20 April 1981. His punishment consisted of forfeiture of \$300.00 per month for 2 months (suspended for 6 months); reduction to SP4/E-4; extra duty for 30 days; and a letter of reprimand. He did not appeal this punishment.
 - (2) On 26 October 1981, company grade NJP for absenting himself from his place of duty (additional training) on 19 October 1981 and for disobeying a lawful order from an officer to report for additional training on 17 October 1981. His punishment consisted of forfeiture of \$75.00, reduction to private first class (PFC)/E-3 (suspended for 30 days) and 14 days extra duty. He did not appeal this punishment.
 - (3) On 31 December 1981, company grade NJP for absenting himself from his appointed place of duty at accountability formation on 21 December 1981. His punishment consisted of reduction to PFC/E-3 (suspended for 60 days) and 3 days extra duty. He did not appeal this punishment.
 - (4) On 12 May 1982, company grade NJP was imposed against him for absenting himself from his appointed place of duty from 0630 hours to 1300 hours. His punishment consisted of forfeiture of \$168.00, reduction to PFC/E-3, and 14 days extra duty. He appealed this punishment and provided statements to the battalion commander. His appeal was denied.
 - (5) On 14 July 1982, company grade NJP for failure to go to his appointed place of duty at accountability formation on 21 December 1981. His punishment consisted of forfeiture of \$149.00, reduction to Private/E-2, and 14 days extra duty. He did not appeal this punishment.
 - f. On 20 January 1983, court-martial charges were preferred against him. A DD Form 458 (Charge Sheet) shows, while assigned to Company B, 3d Battalion, 19th Infantry, Fort Stewart, he was charged with one specification of being absent without leave (AWOL) from 3 August 1982 to 10 January 1983.

g. After consulting with legal counsel on 24 January 1983, the applicant voluntarily requested discharge for the good of the service, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In doing so, he acknowledged that the charges preferred against him under the UCMJ, authorized the imposition of a bad conduct discharge or dishonorable discharge. He further acknowledged:

- he had not been subjected to coercion with respect to his request for discharge
- he had been advised of the implications that were attached to it
- by submitting the request, he was acknowledging he was guilty of the charge(s) against him or of (a) lesser included offense(s) therein contained which also authorized imposition of a bad conduct or dishonorable discharge
- he could be discharged under other than honorable conditions and he could be ineligible for many or all benefits administered by the Department of Veterans Affairs (VA)
- he could be deprived of many or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he would forfeit all accrued leave and be reduced to the lowest grade of E-1
- he could expect to encounter substantial prejudice in civilian life by reason of an under other than honorable conditions discharge
- he was advised he could submit any statements he desired in his own behalf, and elected not to do so
- he was advised of his right to request a separation physical but he elected not to do so

h. On the same date, his request for excess leave was approved.

i. On 1 February 1983, the unit commander, Special Processing Control Facility, Fort Knox, recommended approval of his request for discharge for the good of the service, under provisions of Chapter 10, Army Regulation 635-200, with an under other than honorable conditions discharge.

j. On the same date, his intermediate commander recommended approval of his request and forwarded his request to the approval authority.

k. On 7 February 1983, the separation approval authority approved his request for discharge, under the provisions of Chapter 10, Army Regulation 635-200, for the good of the service. He directed issuance of an Under Other than Honorable Conditions Discharge Certificate and that he be reduced to private (PV1)/E-1 in accordance with Army Regulation 635-200.

I. On 28 February 1983, the applicant was discharged. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, by reason of for the good of the service-in lieu of trial by court-martial, with a character of service of under other than honorable conditions, and a separation code of JFS and reenlistment code 3. It further shows he had 160 days' time lost from 3 August 1982 to 9 January 1983, and 1 day time lost on 20 April 1981. His DD Form 214 shows in:

- Block 4a (Grade, Rate, or Rank) – PV1.
- Block 12c (Record of Service), he completed 4 years, 9 months, and 28 days net service this period.
- Block 13 (Decorations, Medal, Badges, Citations, and Campaign Ribbons Awarded or Authorized: Army Service Ribbon, Army Good Conduct Medal, Marksman Marksmanship Qualification Badge with Rifle (M-16) and Hand Grenade Bars.
- Block 1 (Remarks) lists his immediate reenlistment but does not list his continuous honorable service or whether he completed his first term of service
- Block 27 (Reenlistment Code) – RE, 3B, 3C.

m. On 13 March 1987, the Army Discharge Review Board denied his request for an upgrade of his discharge, finding the actions taken by his command were both proper and equitable.

n. On 7 October 2008, and in ABCMR Case Number AR20080008996, the Board found no error or injustice in his case and had no basis upon which to grant relief.

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:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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.

a. Discharge upgrade: Deny. The evidence shows the applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary

requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his available 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 available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. Continuous Honorable Service: Grant. The Board noted that the applicant's service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

■ ■ ■ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial amendment of the ABCMR's decision in Docket Number AR20080008996 on 7 October 2008. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 to show in the Remarks block:

- Continuous Honorable Service 17 November 1977 to 29 June 1980
- Member Completed First Term of Service

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3-7 provided:

(1) 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. Only the honorable characterization may be awarded a member upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

b. Chapter 10 stated a member who has committed an offense or offenses, the punishment of which under the UCMJ and the Manual for Court Martial, 1969 (Revised

Edition) includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, or, where required, after referral, until final actions by the court-martial convening authority.

(1) A medical examination is not required but may be requested by the member under Army Regulation 40-501 (Medical Services – Standards of Medical Fitness), chapter 10. A member that requests a medical examination must also have a mental status evaluation before discharge.

(2) Commanders will insure that a member will not be coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. Consulting counsel will advise the member concerning:

- the elements of the offense or offenses charged
- burden of proof
- possible defenses
- possible punishments
- provisions of Chapter 10
- requirements of voluntariness
- type of discharge normally given under provisions of Chapter 10
- rights regarding the withdrawal of the member's request
- loss of Veterans Administration benefits
- prejudice in civilian life because of the characterization of the discharge

(3) The separation authority will be a commander exercising general court-martial jurisdiction or higher authority. However, authority to approve discharges in cases in which a member has been AWOL for more than 30 days and has been dropped from the rolls of his or her unit as absent in desertion, and has been returned to military control, may be delegated to the commander exercising special court-martial convening authority over the member.

(4) An under other than honorable discharge certificate normally is appropriate for a member who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate if such is merited by the member's overall record during the current enlistment.

2. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or

full time training duty. The separation program designator "JFS" corresponded to "For the good of the service" and the authority, Army Regulation 635-200, Chapter 10.

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/NR) 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. 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//