

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 August 2024

DOCKET NUMBER: AR20240001339

APPLICANT REQUESTS:

- reconsideration of his previous request to upgrade his under other than honorable conditions discharge to an honorable discharge
- personal appearance before the Board

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

DD Form 149 (Application for Correction of Military Record)

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 AR20150010393 on 31 May 2016.

2. The applicant states he was right, and he only wants to be heard.

3. The applicant enlisted in the Regular Army on 6 November 1979, at the age of 18. He held military occupational specialty 11B, Infantryman, and he was assigned to 3rd Battalion, 6th Infantry, Berlin Brigade in Germany.

a. On 23 September 1980, he received nonjudicial punishment (NJP) for disobeying a lawful order from a noncommissioned officer (NCO). His punishment consisted of 7 days of correctional custody. He appealed his punishment, but his appeal was denied.

b. On 8 October 1980 court-martial charges were preferred against the applicant. The relevant DD Form 458 (Charge Sheet) shows he was charged with for:

- one specification of being disrespectful in language and deportment toward an NCO on 8 October 1980
- two specifications of willfully disobeying a lawful order from an NCO on 8 October 1980
- one specification of being derelict in the performance of his duty on 8 October 1980 in that he willfully failed to perform correctional custody training

c. On 30 October 1980, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of an under other than honorable conditions discharge; and the procedures and rights that were available to him. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of trial by court-martial. In his request for discharge, the applicant:

- indicated he was making this request of his own free will and have not been subjected to any coercion whatsoever by any person and has been advised of the implications that are attached to it.
- acknowledge that by submitting this request for discharge, he is guilty of the charge(s) against him or of (a) lesser included offense(s) therein contained which also authorize(s) the imposition of a bad conduct or dishonorable discharge
- stated that under no circumstances does he desire further rehabilitation, for he has no desire to perform further military service.
- acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights & benefits as a veteran under both Federal and State laws
- waived his right to submit a statement on his own behalf.

d. On 30 October 1980, the applicant's immediate commander recommended approval of his request for discharge for the good of the service. The commander stated that the applicant had a significant negative influence on the other Soldiers in his platoon and in the company. He was a disruptive influence on the company and the longer he remained with the unit, the more impressionable Soldiers would be adversely affected by his actions. He strongly recommended approval of his request and that he receive an under other than honorable conditions discharge.

e. On 30 October 1980, the battalion commander also recommended approval of the applicant's request for discharge for the good of the service. The battalion commander concurred with the unit commander's comments. The applicant was a racist and disruptive, by his own admission, and he had an undesirable influence on others. Given the serious nature of the offenses, he should be court-martialed; however, because he could not be tried until 17-22 November 1980, it seemed expedient to recommend approval of the chapter 10 request for discharge.

f. On 4 November 1980, the separation authority approved the applicant's request for discharge for the good of the service and directed the applicant's reduction to private (PV1)/E-1 and discharge under other than honorable conditions.

g. On 17 November 1980 he was discharged from active duty. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, chapter 10, by reason of conduct triable by court-martial, and his service was characterized as under other than honorable conditions, Separation Code JFS and Reentry Code 3. He had completed 1 year and 12 days of creditable active service.

h. On 12 October 1982, after careful consideration of his military records and all other available evidence, the Army Discharge Review Board (ADRB) determined that he was properly discharged. Accordingly, his request for a change in the type and nature of his discharge has been denied.

i. On 31 May 2016, this Board also denied his request for an upgrade of his discharge. The Board stated:

(1) The applicant contends he was young and immature and in love with his girlfriend. He was homesick and sad. Wanting to go home, he said anything he could think of to get there. The applicant's age at time of his enlistment was noted. However, many Soldiers enlisted at a young age and went on to complete their enlistments and receive honorable discharges. The age of the applicant is not normally a mitigating factor used as a reason to change a properly issued discharge.

(2) In his appeal to his NJP it was apparent that he disliked the Army and had lost motivation for any further satisfactory service. His conduct was characterized by disrespect toward superior authorities and disobedience of orders. There were no mitigating factors or justification for his misconduct.

(3) His voluntary request for discharge under the provisions of AR 635-200, chapter 10, for the good of the service in lieu of trial by court-martial was administratively correct and in conformance with applicable regulations. The type of discharge directed and the reasons for separation were appropriate considering all the facts of the case. The issuance of an under other than honorable conditions discharge was normally considered appropriate when a member was separated under the provisions of chapter 10. There is no evidence of procedural or other errors that would have jeopardized his rights.

(4) The applicant's post-service conduct was noted. However, good post service conduct alone is not sufficiently mitigating to upgrade a properly issued discharge and the ABCMR does not upgrade discharges based solely on the passage of time.

4. 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. 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 there is insufficient evidence of in-service mitigating factors to overcome the pattern of misconduct. The Board noted, the applicant provided no character letters of support nor post service achievements for the Board to weigh a clemency determination.

2. The Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 1 year and 12 days of creditable active service. The Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a honorable discharge. The Board found reversal of the previous Board decision is without merit and denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20150010393 on 31 May 2016.



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) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

a. Paragraph 3-7a states that 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.

b. Paragraph 3-7b states that 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.

2. 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 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. 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.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, applicants 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//