

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 23 October 2024

DOCKET NUMBER: AR20240001655

APPLICANT REQUESTS: an upgrade to his under other than honorable conditions (UOTHC) discharge to an honorable. In addition:

- change his narrative reason for separation from “Frequent involvement in incidents or a discreditable nature with civil or military authorities” to something better
- an upgrade to his JKA separation code to something better

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

- DD Form 149 (Application for Correction of Military Record)
- Social work service interview, 8 June 1982

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, in effect, he is requesting an honorable discharge as he was court-martialed for a minor offense. He was not aware of the Uniform Code of Military Justice (UCMJ) system, nor did he have legal representation and/or counsel to speak on his behalf.
3. The applicant provides an interview conducted by a social work service, 8 June 1982. This document shows:
 - a. He was sent to the United States Army Retraining Brigade after he was tried by a Special Court-Martial (SPCM), for two counts of larceny, he also received non-judicial punishment under the provisions of Article 15, UCMJ for failure to report. He claimed although he was found guilty, he did not steal a bike or a cake. He further claims that his commanding officer enjoyed imposing punishment under the provisions of Article 15.

b. His story sounded believable, his motivation and determination also seemed sincere. He was a mature well intentioned male with a strong desire for success. He did not want this to terminate his military career and seemed willing to work hard to succeed and had a good insight and judgement. Not suicidal/homicidal nor psychotic at that time. Seemed like a good candidate for graduation and a return to duty consideration was strongly encouraged.

c. Recommendations: seemed like a good fit for training. If he was successful while in training, it was recommended that he returns to duty.

d. His potential for graduation was good.

4. The applicant's service record reflects the following:

a. He enlisted in the Regular Army on 2 April 1981.

b. DA Form 2627 (Record of Proceedings Under Article 15, UCMJ), 12 May 1982, reflects the applicant received non-judicial punishment under the provisions of Article 15, UCMJ for on or about 7 May 1982, without authority, failing to go at the time prescribed to his appointed place of duty. He was found guilty. His punishment consisted of reduction to private (PVT), forfeiture of pay of \$128.00, fourteen-days restriction, and seven-days extra duty. He did not request a trial by court-martial, and he declined to have a person speak on his behalf. He did appeal, and his appeal was denied.

c. In a memorandum subject: Report of result of trial, 21 May 1982, shows the applicant was tried by a SPCM for two counts of larceny, a violation of Article 121. He pled not guilty, and was found guilty on both specifications, with exceptions and substitutions on specification one. He was sentenced to confinement at hard labor for five months, reduced to PVT, and to forfeit \$200.00 pay per month for three months. The sentence was adjudicated on 21 May 1982.

d. Orders 148-348, 28 May 1982, show he was reassigned from A Company, 1st Battalion, 1st Infantry Training Battalion, Fort Benning, Georgia to the United States Army Retraining Brigade, Fort Riley, Kansas, with a report date of 4 June 1982.

e. In a memorandum subject: Notification of convening authority's action, 10 July 1982, the convening authority on 7 July 1982, approved the sentence in its entirety and ordered it executed. In this action the commander noted that the sentence to confinement at hard labor for five months has been deferred on 25 June 1982 and ordered the deferment rescinded effective 7 July 1982. This case will be promulgated 7 July 1982.

f. DA Form 2627, 22 July 1982, reflects the applicant received non-judicial punishment under the provisions of Article 15, UCMJ for on or about 19 June 1982, having knowledge of a lawful order, which it was his duty to obey, failed to obey the same. He was found guilty. His punishment consisted of forfeiture of pay of \$25.00 for one month, suspended for thirty-days, seven-days restriction, and seven-days extra duty of three hours a day. He did not request a trial by court-martial, and he declined to have a person speak on his behalf. He did appeal; however, it is unclear if his appeal was denied, this document does not reflect any remarks made by his commanding officer.

g. On 27 July 1982, his commanding officer recommended the applicant be discharged from the service for misconduct because of frequent incidents of a discreditable nature, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, paragraph 14-33b (1).

h. On 28 July 1982, after consulting with legal counsel for his separation action under the provisions of Army Regulation 635-200, Chapter 14, and its effects of the rights available to him, and the effect of any action taken by him in waiving his rights. He requested consideration of his case by a board of officers, and to appear before the board of officers. He further acknowledged:

- he could consult with consulting counsel as his military counsel and/or civilian counsel at no expense to the government
- he was advised he could submit any statements he desired in his own behalf
- he could be ineligible for many, or all benefits administered by the 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 could expect to encounter substantial prejudice in civilian life by reason of a general under honorable conditions discharge

i. On 28 May 1982, the battalion commander concurred with the commanding officer's recommendation, that the applicant be discharged for misconduct of frequent incidents.

j. On 3 August 1982, the applicant was notified that a board of officers, appointed by the commander, United States Army Retraining Brigade, Fort Riley, Kansas, will hold a hearing in the office of the Staff Judge Advocate, to determine whether he should be discharged for misconduct prior to his expiration of term of service. The applicant acknowledged receipt of this notification.

k. On 18 August 1982, after consulting with legal counsel again, he elected to waive consideration of his case by a board of officers, to waive a personal appearance before a board of officers and elected not to submit any statements in his own behalf.

l. On 30 August 1982 the separation authority directed that the applicant be separated from the Army under the provisions of Chapter 14, Army Regulation 635-200 with a characterization of UOTHC.

m. His DD Form 214 for the period ending 9 August 1982, shows he was discharged pursuant to Army Regulation 635-200, Chapter 14-33b (1) with a UOTHC discharge, due to frequent involvement in incidents of a discreditable nature with civil or military authorities. He received a separation code of "JKA" and a reentry code of "RE-3B". He completed 1 year, 4 months, and 1 day of active service. His grade at the time of discharge was PVT. This document also shows in:

- item 13 (Awards): M16 Rifle Qualification Badge, Hand Grenade Badge, Army Service Ribbon
- item 29 (Dates of Lost Time): 21 May 1982 to 24 June 1982

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. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence of mitigating factors to overcome the misconduct of larceny. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 1 year, 4 months, and 1 day of active service.

2. The Board noted, the evidence of record shows, at the time of separation, documentation supports the narrative reason for separation properly identified on the applicant's DD Form 214. As such, the Board determined under liberal consideration changes to the applicant's narrative reason are not warranted. Additionally, the Board found there was insufficient evidence of an error or injustice which would warrant a change in the separation code. Furthermore, 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. Therefore, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.



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 (Armed Forces), 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 15-185 (Army Board for Correction of Military Records), currently in effect, 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. Army Regulation AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. 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. 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, MSO, or period for which called or ordered to active duty.

c. Chapter 14-33b (1) establishes the policy and prescribes procedures for the elimination of enlisted personnel for misconduct by reason of patterns of misconduct for frequent incidents of discreditable nature with civil or military authorities.

4. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "JKA" and RE code 3 are the appropriate codes to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 14-33b (1), based on Misconduct-frequent incidents of a discreditable nature with civil or military authorities.

5. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard.

a. Table 3-1 provides a list of RE codes:

- RE code "1" applies to personnel who have completed their obligated term of active service and are considered qualified to reenter the U.S. Army if all other criteria are met

- RE code “2” Applies to persons not eligible for immediate reenlistment
- RE code “3” applies to personnel who are not considered fully qualified for reentry or continuous service at time of separation, but whose disqualification is waivable. They are ineligible unless a waiver is granted
- RE code “4” applies to personnel separated from last period of active-duty service with a nonwaivable disqualification

b. Table 3-6 provides RE code “3B” applies to personnel who have lost time during their last period of service. They are ineligible for enlistment unless a waiver is granted.

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

7. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

8. 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. 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.

9. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. By law, Title 10 (Armed Forces), U.S. Code, section 1552, this Board is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed. The ABCMR does not have authority to set aside a conviction by a court-martial.

10. 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.

//NOTHING FOLLOWS//