

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 September 2024

DOCKET NUMBER: AR20240001878

APPLICANT REQUESTS: an upgrade of his general, under honorable conditions discharge to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 a review of his military records in order to upgrade his discharge from general to honorable.
3. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 16 October 1980.
  - b. On 27 May 1982, he accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ), for without authority, on or about 21 April 1982, go from his appointed place of duty to wit: "Firing Line" and on or about 11 May 1982, to wit: "Battery Area." His punishment included reduction to private first class (PFC/E-3), forfeiture of \$149.00 for one month, and 14 days of extra duty.
  - c. He received counseling's for the following:
    - 11 February 1983 – refusing a direct order from an officer.
    - 11 February 1983 – would not get up for guard duty.
    - 20 February 1983 – refusal to obey a direct order.

- 1 March 1983 – poor performance and behavior during batter participation at the National Training Center, Fort Irwin, CA.

d. On 8 March 1983, he accepted NJP under Article 15, UCMJ, for the following misconduct:

- on or about 10 February 1983, willfully disobeying a lawful order from his superior commissioned officer.
- on or about 20 February 1983, without authority failing to go at the time prescribed to his appointed place of duty, to wit: KP duty.
- on or about 11 February 1983, without authority failing to go at the time prescribed to his appointed place of duty, to wit: guard duty.

e. His punishment included reduction to private (PV2/E-2), forfeiture of \$300.00 pay for one month, and 30 days in CCF. The applicant appealed; however, his appeal was denied.

f. On 1 April 1983, the applicant's company commander recommended a bar to reenlistment. The applicant initialed he was furnished with a copy of the bar to reenlistment, he was counseled and advised of the basis for the action and did not desire to submit a statement in his own behalf.

g. On 1 April 1983, the battalion commander approved the bar to reenlistment and directed the unit commander to review the bar in six months or 30 days prior to the applicant's expiration term of service or permanent change of station.

h. On 4 April 1983, the applicant's immediate commander notified him of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 13, by reason of unsatisfactory performance, and he advised the applicant of his rights.

i. On 6 April 1983, the applicant acknowledged notification of the proposed separation under the provisions of AR 635-200, chapter 13, for unsatisfactory performance, and its effects; of the rights available to him. He understood the following:

(1) He acknowledged that he was provided the opportunity to consult with legal counsel.

(2) He elected not to submit statements in his own behalf.

(3) He understood he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him.

(4) He understood that if he received a discharge certificate/character of service which was less than honorable, he may make application to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading; however, the act of consideration by either Board did not imply that his discharge would be upgraded.

(5) He further understood that he would be ineligible to apply for enlistment in the U.S. Army for a period of 2 years after discharge.

j. On 4 April 1983, his immediate commander recommended approval of the separation under the provisions of AR 635-200, chapter 13, for unsatisfactory performance. The commander requested that the requirement for rehabilitation be waived because further duty would create serious disciplinary problems, be a hazard to the military mission, be inappropriate because the individual was obviously resisting all rehabilitative attempts, and rehabilitation would not produce the quality Soldier desired by the U.S. Army.

k. On 18 April 1983, the separation authority approved the discharge, directed the applicant be issued an under honorable conditions (general) discharge, and approved the request for waiver of further counseling and rehabilitative efforts. He stated the applicant did not have potential to meet mobilization requirements and should not be transferred to the Individual Ready Reserve.

l. The applicant was discharged on 13 May 1983. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, chapter 13, in the rank/grade of private PV2/E-2, and his service was characterized as under honorable conditions. He completed 2 years, 6 months, and 28 days of net active service during the period covered. This form also shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon and the Overseas Service Ribbon
- Item 26 (Separation Code): JHJ (JKJ)
- Item 27 (Reenlistment Code): RE-3

4. On 11 August 1986, the Army Discharge Review Board denied his request for a change in the character and/or reason for his discharge. The Board determined that the applicant was properly and equitably discharged.

5. 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:

After reviewing the application and all supporting documents, to include DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the lengthy pattern of misconduct leading to the applicant's separation and the lack of any mitigation or clemency evidence provided by the applicant, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

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 separation of enlisted personnel.

a. Chapter 13 provided procedures and guidance for eliminating enlisted personnel determined unqualified for further military service because of unsatisfactory performance. Paragraph 13-2 states, commanders will separate a member for unsatisfactory performance when it is clearly established that:

(1) In the commander's judgment, the member will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier.

(2) The seriousness of the circumstances is such that the member's retention would have an adverse impact on military discipline, good order, and morale.

(3) It is likely that the member will be a disruptive influence in present or future duty assignments.

(4) It is likely that the circumstances forming the basis for initiation of separation proceedings will continue or recur.

(5) The ability of the member to perform duties effectively in the future, including potential for advancement or leadership, is unlikely.

(6) The member meets retention medical standards (Army Regulation 40-501).

b. An honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 13, for unsatisfactory performance would receive a separation code of "JHJ (JKJ)."

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

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification.
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted.
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

5. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

6. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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.

7. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

8. 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.

a. 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.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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//