

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 September 2024

DOCKET NUMBER: AR20240002354

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions (general) to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 6 November 2023
- commercial driver license
- Department of Veterans Affairs member card

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 was told by his Brigadier General that his under honorable conditions (general) discharge would be upgraded to honorable within six months from his discharge. It is more than 47 years later, and the promise of his discharge being upgraded is still not complete. Additionally, his discharge date of 2 December 1975 should have been 2 June 1976.
3. The applicant enlisted in the Regular Army on 22 January 1975 for a period of 3 years. He was awarded military occupational specialty 11E (Armor Crewman). The highest rank he attained was private/E-2.
4. The applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 2 May 1975, for disobeying a lawful order issued by his superior noncommissioned officer on or about 18 April 1975 to remove his car from the installation until it was registered on the installation. His punishment imposed was forfeiture of \$25.00 pay for one month, seven days of restriction, and seven days of extra duty.

5. Two DA Forms 4187 (Personnel Action) shows the applicant's duty status changed from present for duty to absent without leave (AWOL) effective 10 September 1975 and from AWOL to present for duty effective 23 September 1975, additionally stating the applicant surrendered to military authorities.

6. He accepted NJP under the provisions of Article 15, of the UCMJ on 1 October 1975 for being AWOL on or about 10 September 1975 and remaining AWOL until on or about 23 September 1975. His punishment imposed was forfeiture of \$80.00, extra duty for 14 days, and restriction of 14 days.

7. The applicant's immediate commander notified the applicant on 3 November 1975, that he was initiating action to separate him from the Army under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Paragraph 5-37, for failure to maintain acceptable standards for retention.

a. As the specific reason, the commander noted the applicant's inability to adapt emotionally to the military, which in turn had contributed to his performance of duty being less than that acceptable of a Soldier. Too much supervisory time was required from the leaders in his chain of command to ensure he completed any assigned tasks and met the standards set in personal appearance.

b. The commander felt the applicant's poor job performance, need for strict supervision, and poor appearance were manifestations of his inability to adapt. Additionally adding, the applicant had been counselled on the negative traits on numerous occasions and the commander had not seen any positive change in the applicant's attitude and appearance.

c. The commander advised the applicant of the rights available to him and that he may submit a statement in his own behalf. He further recommended an honorable discharge.

8. The applicant acknowledged notification of his proposed discharge, voluntarily consented to the discharge, and elected not to submit a statement or rebuttal in his own behalf.

9. The separation authority approved the recommended discharge on 7 November 1975, and directed that the applicant be issued an under honorable conditions (general) discharge.

10. The applicant was discharged on 2 December 1975 under the provisions of AR 635-200, paragraph 5-37, discharge for failure to demonstrate promotion potential, in the grade of E-2. His DD Form 214 (Report of Separation from Active Duty) shows he received an under honorable conditions (general) characterization of service. He was

credited with 9 months and 28 days of net active service with 13 days of time lost from 10 September 1975 to 22 September 1975.

11. AR 635-200, paragraph 5-37, in effect at the time, set forth the basic authority for the separation of enlisted personnel for the convenience of the government. Personnel whose performance of duty, acceptability for the service, and potential for continued effective service which fell below the standards required for enlisted personnel in the Army may be discharged under this provision.

12. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and documents the applicant provided in support of his application insufficient to support clemency. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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.

X

CHAIRPERSON

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) sets forth the basic authority for the separation of enlisted personnel.
 - 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. An under honorable conditions (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.
 - c. Chapter 5 (Separation for Convenience of the Government) Paragraph 5-37 (Discharge for failure to demonstrate promotion potential) provided for the discharge of enlisted personnel whose performance of duty, acceptability for the Service, and potential for continued effective service fall below the standards required for enlisted personnel in the Army because of the existence of one or more of the following conditions: enlisted personnel who fail to be advanced to the grade of E-2 after 4

months of active duty, or enlisted personnel who fail to demonstrate potential to justify advancement to the grade of E-3. The philosophy of this policy is that commanders will be able to anticipate and preclude the development of conditions which clearly indicate that Soldiers concerned are becoming problems to an extent likely to lead to board or punitive action which could result in their separation under conditions which would stigmatize them in the future.

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 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.

//NOTHING FOLLOWS//