

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 September 2024

DOCKET NUMBER: AR20240002595

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions (UOTHC).

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

- DD Form 149 (Application for Correction of Military Record), 10 November 2023
- two poems written by the applicant

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:

a. He was raised in an abusive home and joined the Army, at the age of 17. At his first duty station many Soldiers did drugs, drank, or both. He was young, dumb, and lived in fear from his abusive childhood, he ended up engaging in drugs and drinking, and requested to get help several times but was denied.

b. He served for 3 years, 6 months, and 12 days, he loves the country and would have fought for it in war, he still would. He has never received notice of his Department of Veterans Affairs (VA) decision he submitted on 17 April 1981. He is diagnosed as bi-polar and in the 1970's he learned he was an addict. He believes he failed the Army, himself, his family, and friends but he is a patriot, a member of the Veterans Incarcerated Group, and knows this is the greatest country.

3. The applicant enlisted in the Regular Army on 15 December 1976, for a 4-year period. He was awarded the military occupational specialty of 76Y (Unit Supply Specialist). The highest rank he attained was specialist four/E-4.

4. The applicant received nonjudicial punishment under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ):

a. On 28 February 1978, during the period of 12 to 14 December 1977, he received and concealed two pre-recorded musical tapes, a value of \$.72, the property of another Soldier, which the property was said to be stolen. His punishment imposed was forfeiture of \$50.00.

b. On 1 April 1980, for failing to go to his prescribed appointed place of duty, the motor pool, on or about 28 March 1980, and company formation on or about 1 April 1980. His punishment imposed was 14 days extra duty.

c. On 21 April 1980, for failing to go to his prescribed appointed place of duty, supply room, on or about 16 April 1980. His punishment imposed was reduction to the grade of E-3.

5. The applicant received numerous informal counseling sessions from 4 September 1979 to 4 April 1980. The areas of emphasis covered in the counseling include, but are not limited to:

- failing to make formation(s)
- failure to report
- sleeping on change of quarters
- having a childish attitude
- being hot headed resulting in disrespect and insubordination
- smoking "pot"
- failing to properly secure his room
- losing his weapon
- attempting fraternization
- arguing openly with other Soldiers

6. The applicant's service record is void of the complete facts and circumstances surrounding his discharge processing. However, his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14 (Separation for Misconduct), for misconduct – frequent incidents of a discreditable nature with civil or military authorities, in the grade of E-1. His service was characterized as under other than honorable conditions, with separation code JKA and reenlistment code of 3. He completed 3 years, 6 months, and 12 days of net active service. He was awarded or authorized the Army Good Conduct Medal and the Expert Qualification Badge Rifle, M-16.

7. The applicant additionally provides two poems, which he authored for the Board's review.

8. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200, Chapter 14, for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

9. 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:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The applicant's separation packet is not available for review. However, other evidence shows the applicant committed a series of misconduct consisting of at least 3 NJPs. He was frequently counseled but did not seem to respond to counseling. Accordingly, his chain of command initiated separation action against him. He was discharged for misconduct, frequent incidents of a discreditable nature with civil or military authorities, with an under other than honorable conditions characterization of service. The burden of proof rests with the applicant. The Board found no error or injustice in his separation processing. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference in support of a clemency determination. Therefore, 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.

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.

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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. 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.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

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//