

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 November 2024

DOCKET NUMBER: AR20240002994

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- a video/telephonic appearance before the Board

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

DD Form 149 (Application for Correction of Military Record), 22 January 2024

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 while in the service he was young, single, and away from his family and friends. Coming from Michigan and being stationed in California was a huge change for him and he began drinking and getting into trouble. During this time, he was undergoing extensive medical issues and had extra time on his hands, he became bored. His boredom and extra time made getting alcohol too easy, as in the barracks snack room there was a vending machine for dispensing beer. He was a good Soldier who was able to perform his duties as required. Before his discharge, he was charged with being absent without leave (AWOL) although he states he contacted his supervisor who gave him an additional week to report due to having some issues. He arrived back to the installation and found the request had not been recorded and he had nothing to prove the authorization, which was given to him.
3. The applicant enlisted in the Regular Army on 3 April 1984, for a period of 4 years. He was awarded the military occupational specialty of 11B (Infantryman). The highest rank he attained was private first class/E-3.
4. The applicant accepted nonjudicial punishment, under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) on/for:

a. On 16 September 1985, for disobeying a lawful order from his squad leader, when he was told to make uniform corrections, and for showing up to the same formation in an extremely slovenly appearance. His punishment imposed was extra duty for 14 days and restriction for 14 days.

b. On 23 October 1985, for failing to obey a lawful order by not remaining on strict bed rest and leaving his place of residence on or about 9 October 1985, and for failing to go to his prescribed place of duty on or about 10 October 1985. His punishment imposed was forfeiture of \$150.00 for one-month, reduction to the grade of private (PVT)/E-2, and extra duty for 14 days.

c. On 21 January 1986, for being derelict in his performance of duties by failing to remain on guard duty on or about 15 January 1986, and for failing to go to his prescribed place of duty, accountability formation, on or about 17 January 1986. His punishment imposed was forfeiture of \$50.00, reduction to the grade of PVT/E-1, extra duty of 14 days, and restriction for 14 days.

d. On 22 July 1986, for going AWOL on or about 2 July 1986 and remaining AWOL until on or about 9 July 1986. His punishment imposed was forfeiture of \$149.00 pay per month for one-month, extra duty for 14 days, and restriction for 14 days.

e. On 10 September 1986, for being disrespectful in language and wrongfully communicating a threat towards a noncommissioned officer, and for failing to obey a lawful order from a noncommissioned officer on or about 7 August 1986. His punishment imposed was forfeiture of \$200.00 pay per month for two-months, extra duty for 30 days, and restriction for 30 days.

5. On 29 September 1986, the applicant's immediate commander notified the applicant of the intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12b, for patterns of misconduct. The commander noted the specific reasons were the applicant's inability to conform to acceptable standards of conduct as evidenced by five Article 15's, a bar to reenlistment, revocation of his driving privileges, and his two arrests by civil authorities.

6. On the same date, the applicant acknowledged receipt of the notification for separation and consulted with counsel. He was advised of the basis for the contemplated action to separate him and of the rights available to him. He waived consulting counsel, consideration of his case and a personal appearance before a board of officers. He further understood he may encounter prejudice in civilian life if an under honorable conditions (General) discharge was issued to him and elected to not submit a statement in his own behalf.

7. On 29 September 1986, the applicant's immediate commander formally recommended his separation, under the provisions of AR 635-200, paragraph 14-12b. His intermediate commanders recommended approval of his separation.

8. The separation authority approved the recommended separation action on 2 December 1986, and further directed the issuance of an under other than honorable conditions discharge.

9. The applicant was discharged on 18 December 1986, under the provisions of AR 635-200, paragraph 14-12b, by reason of a pattern of misconduct, in the grade of PVT/E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he received a characterization of service of under other than honorable conditions, with separation code JKM, and reenlistment code RE-3 and 3C. He completed 2 years, 8 months, and 16 days of active service. He was awarded or authorized the Marksman Marksmanship Qualification Badge with Rifle Bar (M-16), Expert Marksmanship Qualification Badge with Grenade Bar, and the Army Service Ribbon.

10. 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.

11. 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:

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for misconduct, specifically inability to conform to acceptable standards of conduct as evidenced by five Article 15's, a bar to reenlistment, revocation of his driving privileges, and his two arrests by civil authorities. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. 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 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. Army Regulation (AR) 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.

4. 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 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.

a. 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, 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//