

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 November 2024

DOCKET NUMBER: AR20240003088

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) letter, 30 June 2023

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 during his entire time of service he suffered from tumors in his chest including in his lungs, which limited his ability to pass the run part of the physical training test. It was unfair and his medical condition was service connected.
3. The applicant enlisted in the Regular Army on 6 August 1986.
4. He received nonjudicial punishment (NJP) under the Uniform Code of Military Justice (UCMJ) for on or about 1 April 1987, failure to obey a lawful order.
5. On 15 May 1987, the applicant's command was notified of suspension of check cashing privileges against him, and this was after his third dishonored check offense within one year.
6. On 20 May 1987, the applicant exceeded the screening table weight by 13 pounds and the body fat standards by 2.35 percent. He was provided nutrition and weight reduction counseling.

7. On 12 November 1987, his commander completed two administrative letters of reprimand under the provisions of Army Regulation (AR) 600-37 (Unfavorable Information) for during the last unit alert he failed to secure his M16A1 rifle. This is in direct violation of Policy Letter #1 and the UCMJ.

a. Although he initially asked a member of this unit to watch his weapon, his failure to check upon the status of his weapon resulted in it being left unsecured. Had one of his supervisors not secured this equipment it could have been stolen or destroyed, as it was left in an area with moving vehicles.

b. His utter disregard for the potential harm that could have been caused by the theft of this weapon was demonstrated by his failure to inquire about his weapon. As a military policeman, he should clearly know better, but it is obvious that weapons security means very little to him.

c. Conduct such as this will not be tolerated within this command. Only the initial request that someone look after his weapon has prevented him from imposing NJP upon him. However further conduct such as this will result in additional administrative and/or punitive action being taken against him.

d. His commander filed this letter in his Military Personnel Records Jacket (MPRJ) for a period of three years or until he departs the unit.

8. The second administrative letter of reprimand was issued against the applicant for recently failing the Army Physical Fitness Test, administered to him on or about 2 September 1987.

a. As a soldier in this command, he is expected to always maintain himself in a high state of readiness this includes physical fitness. In failing his physical readiness test, he failed himself and his unit and have demonstrated a gross lack of self-motivation.

b. Conduct such as this will not be tolerated. Further actions such as this may result in additional administrative action being taken against him, to include separation for Unsatisfactory Performance.

c. His commander filed this letter in his MPRJ for a period of three years or until he departs the unit.

9. On 14 December 1987, another administrative letter of reprimand was issued for again failing to pass the Army Physical Fitness Test, administered to him on or about 14 December 1987. He was allotted 96 days from the last "for record" test to train and he failed to take advantage of this time.

a. As a Soldier in this command, he is expected to always maintain himself in a high state of readiness this includes physical fitness. In again failing his physical readiness test, he failed himself and his unit and have demonstrated a gross lack of self-motivation.

b. It is obvious he is not concerned with being a soldier or interested in meeting the responsibilities associated with the profession.

c. His commander filed this letter in his MPRJ for a period of three years or until he departs the unit.

10. He received NJP on 11 January 1988, for between 20 November and 1 December 1987, failed to obey a lawful order issued by his squad leader.

11. On 24 February 1988, his immediate commander notified him of his intent to separate him under the provisions of AR 635-200, chapter 13. The specific reason for the proposed action was in his judgment he would not develop sufficiently to participate in further training and become a satisfactory soldier as evidenced by:

a. His substandard duty performance, as evidenced by numerous counseling statements administered to him by his supervisors.

b. His utter disregard for the rules, regulations and orders of the service as evidenced by the Article 15 he received on 6 May 1987 and 11 January 1988, various counseling statements and Letters of Reprimand.

c. His financial irresponsibility as demonstrated by his numerous bad checks and failure to properly insure his POV.

d. His failure to take advantage of the rehabilitative opportunity afforded to him in late July to early August.

e. He acknowledged receipt of the notification.

12. On 24 February 1988, having been advised by consulting counsel of the basis for the contemplated action to separate him for unsatisfactory performance under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13, and its effects; of the rights available to him; and the effect of any action taken by him in waiving his rights. He understood he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him.

13. His commander recommended that he be separated from the Army prior to the expiration of his current term of service for unsatisfactory performance. His commander recommended that he receive a general, under honorable conditions discharge.

14. A DA Form 4126-R (Bar to Reenlistment Certificate) was initiated on the applicant due to two summarized article 15's, continuous indebtedness, reluctance to repay, or late payments, and his duty performance being substandard. The bar certificate was approved on 1 March 1988.

15. A memorandum for record (MFR) related to the applicant's separation was completed by his immediate commander stating the chapter 13 started back in February. Service member has since been in the hospital several times for a tumor on his lungs. The service member was released from the hospital the last time on 5 July and the service member is currently on convalescence leave.

16. Another MFR was completed by his commander on 12 August 1988, showing the applicant's multitude of appointments related to his condition(s).

17. On 9 September 1988, the separation authority approved the discharge of the applicant under the provisions of AR 635-200, chapter 13, for unsatisfactory performance. He directed he be issued a General Discharge Certificate.

18. Accordingly, on 29 September 1988, he was discharged. His DD Form 214 shows he completed 2 years, 1 month, and 24 days of active service. It also shows:

- Item 24 (Character of Service): under honorable conditions (General)
- Item 25 (Separation Authority): AR 635-200, chapter 13
- Item 26 (Separation Code): JHJ
- Item 27 (Reenlistment Code): RE 3-3C
- Item 28 (Narrative Reason for Separation): Unsatisfactory Performance

19. The applicant provides VA letter showing evaluation of residuals, thoracotomy for teratoma removal, with resection of right upper lobe, which is currently 30 percent disabling, is continued.

20. There is no evidence the applicant applied to the Army Discharge Review Board (ADRB) for review of his discharge within the ADRB's 15-year statute of limitations.

21. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. Chapter 13 of this regulation, in effect at the time, provides for separation due to unsatisfactory performance when in the commander's judgment the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive

influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely.

22. 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.

#### 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 record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, regulation, and published Department of Defense guidance for liberal and clemency determination requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board found no error or injustice existed to warrant an upgrade to honorable. The applicant provided no evidence of post-service achievements. The Board noted the applicant's Department of Veterans Affairs rating for thoracotomy; however, found based on a preponderance of evidence, the characterization 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.

█

█ █

---

█

█

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 (AR) 635-200 sets forth the requirements and procedures for administrative discharge of enlisted personnel. Chapter 13 of this regulation, in effect at the time, provides for separation due to unsatisfactory performance when in the commander's judgment the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.

a. Paragraph 3-7a (1) states an honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

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/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.

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 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.

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//