

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 December 2024

DOCKET NUMBER: AR20240003457

APPLICANT REQUESTS:

- reconsideration of his previous request for his general, under honorable conditions discharge to be changed to an honorable
- in effect, correct time in service to show his end date as 2 March 1983

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

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20200007823 on 13 November 2020.

2. The applicant states his discharge was based on a criminal conviction in 1983 guilty plea. Until then, his military time should have been calculated because of the presumption of innocence statute. In 2019, the delay was covid and he had benefits until recently. He would like his general discharge changed to honorable to be eligible for Veteran Administration (VA) benefits that he previously had and his active duty time changed to 2 March 1983.

3. A review of the applicant's service record shows:

a. With prior service in the U.S. Army Reserve, on 8 December 1981, the applicant enlisted in the Regular Army.

b. His DA Form 2-1 (Personnel Qualification Record) shows:

- he was absent without leave on 3 August 1983 (1 day)
- civil confinement by authorities (CCA) from 11 August 1982 until 1 April 1983 (234 days)

c. The applicant was given a general counseling between May and August 1982 for the following reasons on:

- 6 May 1982, for failure to report/absent from formation
- 7 May 1982, for failure to report/absent from mandatory formation
- 23 July 1982, for failure to report for air assault school
- 3 August 1982, for missing movement to the field

d. An extract from an undated Blotter Report shows an investigation by the Central Investigation Division (CID) revealed he stole one book of personal checks, belonging to Mr. Q\_\_ and on 24 July 1982, he forged Mr. Q\_\_'s name on two checks, each for \$100 and cashed them at the Post Exchange. He was confined at the Christian County Sheriff's Department, Hopkinsville, KY, on an unrelated case and would be apprehended at a later date. The investigation was continuing by the CID.

e. In August 1982, the applicant received dishonored check notifications for the following dated:

- 9 August 1982: (4 checks, totaling \$336.57)
- 10 August 1982 (1 check, \$30.58)
- 17 August 1982 (1 check, \$100)

f. An extract of an entry was taken from the 12 August 1982 Blotter Report showing the applicant allegedly shot Mr. S\_\_ in the head (fatally) an undetermined number of times. He was in the custody of the Christian County Sheriff's Department, KY and charged with first degree murder. An investigation was being conducted by the Christian County Sheriff's Department.

g. The applicant underwent a Mental Hygiene Consultation. The consultation showed he had a poor attitude, poor motivation, committed first degree murder, and he experienced problems adjusting to the military. He was counseled, his family was contacted, and he was being recommended for separation. He was being held in civil confinement.

h. On 17 December 1982, the applicant's commander notified the applicant of his intent to initiate action to separate him under the provisions of chapter 14, Army Regulation (AR) 635-200, for misconduct. The specific reason for the proposed action was murdered and continuing problem with dishonored checks, discreditable instances with military and civilian authorities. He acknowledged the same day.

i. After consulting with legal counsel, requested consideration of his case by a board of officers. He declined to submit statements on his own behalf.

j. A letter, from Headquarters 101st Airborne Division (Air Assault), Fort Campbell, subject: Appointment of Board of Officers, dated 28 February 1983, shows a board was appointed to determine whether the applicant should be discharged for misconduct. On 4 March 1983, the applicant was notified.

k. On 4 March 1983, the applicant's case was referred to the board.

l. On 7 March 1983, the applicant appeared before the Board and was represented by counsel. The board found him unfit for retention and recommended the issuance of a General Discharge Certificate.

m. On 28 March 1983, consistent with a board of officers' recommendations, the separation authority approved the discharge recommendation with issuance of a general discharge under the provisions of 2-6 (1a) of the reference (Separation Program Designator JKM). He would be issued a general, under honorable conditions characterization of service.

n. On 1 April 1983, he was discharged under the provisions of chapter 14, paragraph 14-12b, AR 635-200, by reason of misconduct-pattern of misconduct, with a general, under honorable conditions character of service, after completing 7 months and 29 days of active service and with 236 days of lost time. He was awarded the Army Service Ribbon.

4. On 3 June 1994, the Army Discharge Review Board denied his request for an upgrade of his discharge within that Board's 15-year statute of limitations

5. On 13 November 2020, the ABCMR rendered a decision in Docket Number AR20200007823. The Board carefully considered the applicant's request, 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 the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

6. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. The separation authority may direct a general discharge if such is merited by the Soldier's overall record.

7. In reaching its determination, the Board should consider the applicant's petition, his service record, and his statement in light of the published Department of Defense guidance on equity, injustice, or clemency.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the 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 pattern of misconduct leading to the applicant's separation and the lack of mitigation for such misconduct, 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.

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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 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. A 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 14, paragraph 14-12b provides for the separation of Soldiers when they have a pattern of misconduct involving acts of discreditable involvement with civil or military authorities and conduct which is prejudicial to good order and discipline. The issuance of a discharge under other than honorable conditions is normally considered appropriate for separations under the provisions of Chapter 14.

(1) The separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(2) Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate. A characterization of honorable may be approved only by the commander exercising general court-martial jurisdiction, or higher authority, unless authority is delegated.

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 on the basis of 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//