

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 November 2024

DOCKET NUMBER: AR20240003576

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), 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 he repeatedly requested a discharge from his commander after his best friend passed away at home. He did not know how to handle it at 20 years of age. His heart was into being the best Soldier that he could be until it happened and he lost his drive and focus to continue. He did not know that he could request an upgrade until a Veteran Service Officer told him of it.
3. A review of the applicant's service record shows:
 - a. On 26 July 1983, he enlisted in the Regular Army for a period of 4 years.
 - b. He completed Basic Combat Training and Advanced Individual Training. He was assigned to Headquarters and Headquarters Battery, 2nd Battalion, 59th Air Defense Artillery, Schwabach, Germany.
 - c. On 1 April 1984, he was promoted to private first class (PFC)/E-3.
 - d. He was counseled via DA Forms 4856 (Developmental Counseling Form) on:
 - 16 January 1984 at 0800 hours for failing to report to morning clean up duty
 - 1 March 1984 superior duty performance and superior personal appearance during February 1984

- 5 December 1984 for being late for work at 0530 hours on 5 December 1984
- 23 January 1985 for missing 0645 hours formation and for not being at work until 0830 hours
- 5 February 1985 for failing to be at mandatory 0615 hours formation
- 6 February 1985 for not going to battalion clean-up on 5 February 1985
- 6 February 1985 for being absent from 0645 work call formation and not coming into work until 1300 hours
- 27 March 1985 for failing to be in the correct field uniform after repeated requests
- 3 May 1985 for failing to be at a 0615 hour physical training formation

e. On 21 June 1985, a flag was imposed against him to block his promotion to specialist as the result of his duty performance.

f. On 7 August 1985, his commanding officer counseled him that he could be separated if his behavior continued.

g. A statement by his first sergeant, dated 26 August 1985, noted he was sleeping at the Charge of Quarters (CQ) desk, he did not clean his room, he did not go to work, and he was found sleeping in his bed until 1250 hours on the same date. He recommended separation from the Army.

h. A statement by his first sergeant, dated 10 September 1985, noted he was absent from the 0615 formation.

i. On 18 September 1985, he underwent a physical examination and gave a report of medical history for the purpose of chapter separation. He noted his ongoing medical conditions and the examining physician found he was qualified for separation.

j. On the same date, he underwent a mental health evaluation as requested by his command for separation proceedings. A DA Form 3822-R (Mental Status Evaluation) reflects he had normal behavior, he was fully alert and fully oriented; his mood or affect was unremarkable; his thinking process was clear and he had normal thought content with good memory. In the opinion of the examining psychiatrist, he had the mental capacity to understand and participate in the proceedings and was mentally responsible. He met the retention standards of Chapter 3, Army Regulation 40-501 (Physical Standards).

k. On 26 September 1985, he accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice for failing to go to his appointed place of duty on 25 August 1985 as HHB CQ runner; and for disobedience of a lawful order to get up and report of CQ duty on the same date. His punishment consisted of

reduction to private (PVT)/E-1, forfeiture of \$310.00 pay per month for 2 months, and 45 days of extra duty and restriction.

l. On 4 October 1985, his company commander notified him of his intent to recommend his discharge from the service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13 for unsatisfactory duty performance and notified him of his rights. The specific reasons for his proposed action were based upon him being repeatedly late for formations, he had been absent without leave from his place of duty and had been insubordinate to his supervisors. He had been transferred to his company's supply section to give him an opportunity to improve his duty performance, but his performance remained unsatisfactory. He understood the least favorable characterization he could receive was an under honorable conditions (General). He further understood he had a right to consult with consulting counsel, to submit statements in his own behalf, to obtain copies of the documents that would be sent to the discharge authority, and to waive these rights in writing.

m. On the same date, he acknowledged his company commander's notification memorandum and elected his rights. He understood the basis for the contemplated action to accomplish his separation for unsatisfactory duty performance, its effects, and the effect of any action taken by him to waive any of his rights. He further understood that he may expect to encounter substantial prejudice in civilian life if a general discharge were issued to him and he would be ineligible to apply for enlistment for a period of 2 years after discharge. He elected not to waive his rights, he declined counsel, he elected not to submit statements in his own behalf, he elected to receive copies of the documents that would be sent to the separation authority, and he declined treatment at a Veterans Administration medical center. He indicated he retained a copy of the notification memorandum.

n. On the same date, his company commander recommended his separation for unsatisfactory duty performance with an under honorable conditions (General) characterization of service, and he forwarded his recommendation to the separation approval authority.

o. On 4 October 1985, the separation authority approved his discharge under the provisions of Army Regulation 635-200, paragraph 13, by reason of unsatisfactory performance, and directed issuance of a General Discharge Certificate.

p. On 25 October 1985, the applicant was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged from active duty under the provisions of Army Regulation 635-200, Chapter 13 with an under honorable conditions (General) characterization of service, a separation code of JHJ, and

reenlistment code 3. He completed 2 years and 3 months of active service. He was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon
- Marksman Marksmanship Qualification Badge with Rifle Badge (M-16)

4. There is no evidence he applied to the Army Discharge Review Board for a review of his discharge within that Board's 15-year statute.

5. 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 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 unsatisfactory performance. The Board found no error or injustice in the separation proceedings under the regulation and subsequent characterization of service assigned at separation. The Board noted the volume of counseling and nonjudicial punishment associated in the record. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|---|---|---|----------------------|
| : | : | : | 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 15-185 (Army Board for Correction of Military Records) 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), sets policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons.

a. 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.

b. Chapter 13 provides commanders will separate a member for unsatisfactory performance when it is clearly established that:

(1) In the commander's judgment, the member will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory soldier; or

(2) The seriousness of the circumstances is such that the member's retention would have an adverse impact on military discipline, good order, and morale;

(3) It is likely that the member will be a disruptive influence in present or future duty assignments;

(4) It is likely that the circumstances forming the basis for initiation of separation proceedings will continue or recur;

(5) The ability of the member to perform duties effectively in the future, including potential for advancement or leadership, is unlikely; and

(6) The member meets retention medical standards of Army Regulation 40-501.

4. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "JHJ" corresponded to "Unsatisfactory Performance," and the authority, Army Regulation 635-200, chapter 13.

5. 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. 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. 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//