

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 December 2024

DOCKET NUMBER: AR20240003827

APPLICANT REQUESTS RECONSIDERATION OF: an upgrade of his general under honorable conditions discharge to an honorable.

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 AR20060002995 on 26 September 2006.

2. The applicant states, in effect:

a. When he left Germany enroute to Fort Knox, he was a specialist (SPC)/E-4 with no blemishes. While in the barracks, under his own assumption, he thought he was off from duty. He got with wrong crowd stateside. His foolish, inadvertent action unintentionally jeopardized his rank. It was alleged he stole fuel off base, which was untrue. A witness seen him pumping gas but not pay; however, he paid before the witness pulled into the gas station. He had no need to steal because he had access to a gas card that was given to him from his father. Although he did not use the card at the time, he paid \$10.00 and some change in cash, just enough to get him back on base. Mysteriously the female worker no longer worked there when he and his father went to speak to her to prove his innocence.

b. He and his father went as far as requesting the video footage to prove he went inside to pay for fuel but was not given the opportunity or due process. As a result, this was the disciplinary action that got him the general under honorable conditions discharge. Had he been properly advised, he would have just loss rank and extra duty for previous incidents that he mentioned. He was discharged three months prior to his expiration of term of service (ETS) and could have been honorably discharged at the

rank of E-3/2 [sic]. Since his discharge, he has matured and obtained a degree in Information Technology and retired as a law enforcement officer.

3. The applicant did not provide evidence in support of his application.

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

a. He enlisted in the Regular Army on 5 February 1986 for a period of four (4) years.

b. He accepted nonjudicial punishment (NJP) as follows:

- On 10 January 1989, for wrongfully appropriated 10.25 gallons of gasoline on 22 November 1988; he was reduced to the grade of E-2
- On 8 February 1989, for being derelict in the performance of his duties; he was reduced to the grade of E-1
- On 6 September 1989, for failing to obey a lawful order from a senior noncommissioned officer on 25 August 1989; he was reduced to the grade of E-1 (suspended)

c. On 12 October 1989, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of paragraph 13 of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel) for unsatisfactory performance.

d. The applicant acknowledged receipt of the commander's intent to separate him on 12 October 1989. He elected representation by legal counsel who advised him of the basis for the contemplated separation action for unsatisfactory performance, the type of discharge he could receive and its effect on further enlistment or reenlistment, the possible effects of this discharge, and of the procedures/rights available to him. He elected to submit a statement in his own behalf. He acknowledged he:

- understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him
- understood he could be ineligible for many or all benefits as a veteran under Federal and State laws as a result of the issuance of a discharge under other than honorable conditions
- understood if he received a discharge characterization of less than honorable, he could make an application to the Army Discharge Review Board (ADRB) or the ABCMR for an upgrade, but he understood that an act of consideration by either board did not imply his discharge would be upgraded

e. It is unclear as to the exact date when the separation authority approved the applicant's discharge under the provisions of AR 635-200, paragraph 13 for unsatisfactory performance, and directed the applicant be issued a general under honorable discharge.

f. His DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects he was discharged on 2 November 1989 under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 13, unsatisfactory performance, separation code JHJ, reenlistment code 3B/3C/3, and character of service of general under honorable conditions. He served 3 years, 8 months, and 24 days of net active service this period, with lost time from 15 September 1988 thru 18 September 1988.

5. AR 635-200, in effect at the time, states action will be taken to separate a member due to unsuitability 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.

6. The applicant applied to the ADRB for an upgrade of his discharge on 13 March 1998. The ADRB determined the discharge was both proper and equitable and voted to deny relief.

7. U.S. Army Criminal Investigation Command memorandum, dated 31 October 2024, Subject: Request for Sanitized Reports of Investigations (ROIs) and Military Police Reports, which included a copy of the DA Form 4833 (Commander's Report of Disciplinary or Administrative Action) that shows the applicant received nonjudicial punishment. The memorandum did not include the Final ROI.

8. 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:

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 record of service, documents submitted in support of the request and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's request and available military records, the Board determined there is

insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board applauds the applicant's post service achievements in obtaining his bachelor's degree since his discharge. The applicant provided no character letters of support for the Board to weigh a clemency determination.

2. The Board noted, the applicant was discharged for unsatisfactory performance and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Therefore, the Board denied relief.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20060002995 on 26 September 2006.

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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. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that 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 13 of that regulation provides, in pertinent part, if it is clearly established that the Soldier will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier. Further stating it is likely that the Soldier will be a disruptive influence in present or future duty assignments and his ability to perform duties effectively in the future, including potential for advancement or leadership, is unlikely.

2. 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. 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//