

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 November 2024

DOCKET NUMBER: AR20240003856

APPLICANT REQUESTS:

- an upgrade his under honorable conditions discharge (General)
- payment of his accrued leave
- reimbursement for money paid for his Montgomery GI Bill
- remission of indebtedness to the Internal Revenue Service (IRS)
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Three DA Forms 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)), 5 December 1986, 7 January 1987, and 17 February 1987
- counseling form page 2
- First Endorsement to Memorandum, Subject: Elimination Action Under Provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b (Patterns of Misconduct)
- Administrative Separation Processing Action
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 his issues on active duty began when his wife began bouncing checks from their banking account for which he had to take responsibility. He borrowed \$1,200.00 to be able to move off post. She later left him and he was ordered to move back on base and he had to give his property to the church.

His first line leader continuously harassed him because he was older and he outperformed the younger Soldiers. On one occasion, when he graduated from the Fort Benning Training Facility, he was not allowed to see her the day before or to spend the night with his wife, who flew in for the graduation. When his vehicle broke down he had to flag someone down to get a ride to his unit. When he asked his chain of command if he could get his vehicle, he told them he secured his Table of Allowances (TA) 50 equipment in the trunk. He was accused of not properly securing his gear and was given an Article 15 and was told he was a disciplinary problem. From then on, they continued to give him one Article 15 after another and took money from him which caused his family financial hardship. He was then discharged from the Army and upon his separation the Army did not pay him for his accrued leave but was only given \$100.00. At the time, he thought the pay for his leave was kept to pay back the loan; however, in 1989 his IRS taxes were confiscated which he thought it was to repay the loan.

3. The Army Review Boards Agency (ARBA) does not have purview over issues involving the Veterans Affairs educational benefits or indebtedness to the IRS. The Board will not consider the applicant's requests for reimbursement of monies paid for the Montgomery GI Bill or his indebtedness to the IRS. The Board will consider his request for an upgrade of his under honorable conditions (General) discharge to honorable and payment of his accrued leave.

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

- a. On 22 April 1986, the applicant enlisted in the Regular Army.
- b. DA Form 2-1 (Personnel Qualification Record – Part II) shows in item 18 (Appointments and Reductions) the applicant was advanced to the rank/grade of private (PV2)/E-2, effective 22 October 1986 and he was reduced to the rank of private PVT/E-1, effective 5 December 1986.
- c. DD Form 2366 (Veterans' Educational Assistance Act of 1984 (GI Bill) shows the applicant enrolled in the GI Bill and understood he would pay \$100.00 per month for 12-months of active duty and it would not be refunded. It also stated he must receive an honorable discharge from the service to establish his entitlement to the GI Bill of 1984.
- d. On 5 December 1986, the applicant accepted nonjudicial punishment under the provisions of Article 15, UCMJ for one specification of:
  - failure to report to his appointed place of duty
  - disrespect to a Noncommissioned Officer (NCO)
  - dereliction of duty by failure to have TA-50 for the firing range

His punishment included reduction to the rank/grade of PVT/E-1; forfeiture of \$149.00 suspended if not vacated before 3 June 1987; and extra duty for 14-days. The applicant did not appeal the punishment.

e. On 16 December 1986, the forfeiture of \$149.00 was vacated, when the applicant failed to go to his appointed place of duty.

f. On 7 January 1987, the applicant accepted nonjudicial punishment under the provisions of Article 15, UCMJ, for failure to go to his appointed place of duty. His punishment included 14-days extra duty. The applicant appealed his punishment which was denied by the battalion commander on 12 January 1987.

g. On 17 February 1987, the applicant accepted nonjudicial punishment under the provisions of Article 15, UCMJ, for failure to report to his appointed place of duty. His punishment included forfeiture of \$153.00 for one month, 14-days extra duty and restriction. The applicant appealed his punishment which was denied by the battalion commander on 19 February 1987.

h. On 14 April 1987, the applicant's commander initiated separation action under the provisions of AR 635-200, paragraph 14-12b for patterns of misconduct. During the period of 15 September 1986 through 17 February 1987 the applicant demonstrated a pattern of misconduct which consisted of discreditable involvement with military authorities by committing the offenses of:

- failure to report to his appointed place of duty
- disrespect to a NCO
- dereliction of duty

He was resistant to rehabilitation attempts and received several non-judicial punishments. The commander recommended the applicant receive a under other than honorable conditions discharge.

i. On 14 April 1987, the applicant was notified of his commander's initiation of separation under the provisions of AR 635-200, paragraph 14-12b and his recommendation of separation under other than honorable conditions. The applicant acknowledged the notification of separation.

j. On 14 April 1987, after consultation with counsel, the applicant waived consideration by an administrative separation board contingent upon receiving separation no less than general under honorable conditions. The applicant did not submit statements in his own behalf. He also acknowledged:

- made the request of his own free will and was not subject to coercion

- separation authority may refuse to accept the conditional waiver
- requested appearance before the administrative separation board
- requested representation by counsel
- may expect to encounter substantial prejudice in civilian life
- may be ineligible for many or all benefits as a veteran under Federal and State laws
- may apply to the Army Discharge Review Board (ADRB) and Army Board for Correction of Military Records to request upgrade of character of service
- consideration by either Board does not imply upgrade will be granted

k. On 14 April 1987, the battalion commander recommended the applicant be separated under the provisions of AR 635-200, paragraph 14-12b with an under other than honorable conditions characterization of service.

l. On 16 April 1987, the brigade commander recommended the applicant be separated under the provisions of AR 635-200, paragraph 14-12b with an under than honorable conditions characterization of service.

m. On 6 May 1987, the separation authority directed the applicant be separated with a general under honorable conditions discharge.

n. On 8 May 1987, Orders Number 89-336, issued by Headquarters, 7th Infantry Division (Light) and Fort Ord, the applicant was assigned to the U.S. Army transition point, effective 22 May 1987, for discharge from the Army.

o. On 22 May 1987, the applicant was discharged from active duty under the provisions of AR 635-200, paragraph 14-12b with an under honorable conditions (General) discharge. DD Form 214 shows the applicant completed 1-year, 1-month, and 1-day of active service. It also shows in items:

- 15 (Member Contributed to Post-Vietnam Era Veterans' Educational Assistance Program – YES
- 17 Days Accrued Leave Paid – 28

p. On 17 June 1988, the ADRB denied the applicant's request for the upgrade of his general under honorable conditions discharge to honorable. The Board determined he was properly and equitably discharged.

5. The applicant provides the second page of a counseling form which shows the applicant stated Sergeant (SGT) G- told him the report time was 0530 hours. He later told the applicant he was sorry; he could not find his telephone number to call him. The applicant called the SGT four time before he went to bed to make sure he had the

correct report time, but he was unable to contact the SGT. He ended up being late for duty and he was willing to suffer the consequences.

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 a pattern of misconduct. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. The Board carefully considered the applicant's request for payment of accrued leave and reviewed his record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. The Board found no evidence to support payment of the applicant's leave. The Board noted his DD Form 214 shows he was paid for his accrued leave and there is no evidence to the contrary and the applicant provides no evidence to the contrary to warrant a recommendation for relief.

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, USC, 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) 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 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.

3. AR 635-200 (Personnel Separations – Enlisted Separations) in effect at the time, 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. Readiness is promoted by maintaining high standards of conduct and performance.

a. Paragraph 1-14 (Reduction in grade), when a member is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade.

b. Paragraph 3-7(a) (Honorable discharge), 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.

c. Paragraph 3-7b (General discharge), 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; a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization.

d. Paragraph 14-3 (Characterization of service or description of separation), an under other than honorable conditions certificate is normally appropriate for a member discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the member's overall record. When the sole basis for separation is a separate offense which resulted in a conviction by court-martial that did

not impose a punitive discharge, the member's service may not be characterized under other than honorable conditions unless approved by HQDA.

e. Paragraph 14-12 (Conditions which subject members to discharge), subparagraph b, a pattern of misconduct. A pattern of misconduct consisting of: (1) Discreditable involvement with civil or military authorities. (2) Conduct prejudicial to good order and discipline. Discreditable conduct and conduct prejudicial to good order and discipline includes conduct violative of the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

4. Department of Defense Financial Management Regulation 7000.14-R, Volume 7a (Military Pay), chapter 35 (Separation Payments), paragraph 3501 (Accrued Leave Pay), a member who is discharged under honorable conditions is entitled to payment of unused accrued leave unless the member continues on active duty under conditions that require accrued leave to be carried forward. An enlisted member who voluntarily extends their enlistment for the first time is also entitled to payment for unused accrued leave. A member is entitled to receive payment for no more than 60-days of accrued leave during a military career.

//NOTHING FOLLOWS//