

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 December 2024

DOCKET NUMBER: AR20240004436

APPLICANT REQUESTS: reconsideration of his earlier request for upgrade of his under other than honorable conditions discharge to general, under honorable conditions.

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

- DD Form 149 (Application for Correction of Military Record), 27 February 2024
- (Newspaper) Feature Story, "First Black to Head Rutgers ROTC [Reserve Officers Training Corps]" 17 May 1981
- Newspaper Feature Story (3), undated, unattributed, c. 1981
- letter of recommendation, [REDACTED] 19 November 1984
- letter of recommendation, [REDACTED] 20 November 1984
- letter of support, circa 1984
- chain of command approval memoranda, August 1984
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 4 December 1984
- letter of support, [REDACTED] 24 April 1998
- Master in Art Teaching Diploma, August 1999
- Certificate of Training, 16 December 2003
- Peace Award (Organization), 29 October 2013
- letter of support, [REDACTED] 18 January 2024
- letter of support, Lieutenant General (LG) [REDACTED] 19 January 2024
- Outstanding Service Award, (Organization) undated
- letter of confirmation, (Organization) advocacy, 12 February 2024

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 AR1999032268, 25 July 2000.

2. The applicant states:

a. His discharge was inequitable and an injustice. The characterization does not accurately reflect the entire term of his service to the Army and to his country. His discharge was inequitable and unjust because of systemic racial bias against him as a minority service member serving in the Army.

b. His father served for 23 years on active duty. He grew up as a military dependent in military tradition moving around multiple times during his youth. The roots of military service, patriotism, and dedication to the country trace back all the way to the Civil War. He entered ROTC to continue this military service of his family.

c. He completed the Army's toughest schools, and his ROTC training was the very best. He was selected as the cadet corps commander, and he won the George Marshall distinguished military graduate award. He voluntarily took on all these schools because he wanted to be the best trained Soldier possible.

d. He admits what he did was wrong, and he should have used better judgement. When he first saluted his squadron commander, the first thing he saw in his office was an East German border marking sign hanging on the wall behind his desk. As a young naïve lieutenant, it sparked his interest in having his own East German border marking sign.

e. As time went on, he heard many stories of service members who had crossed the border to recover such items without any type of discipline. All the service members he heard about were white service members. When his situation came to light, he was certain nothing would happen because of what he knew had been done before with others. He retained counsel who advised him to avoid a court-martial by resigning. He assured him he would get a general discharge. He contacted everyone in his chain of command, and they all agreed that he should get a general, under honorable conditions discharge.

f. After the legal process left the 5th Corps, it proceeded to the 7th Corps and the commander of the 30th Infantry Division recommended an other than honorable discharge. He was not in his chain of command in any way, and he knew nothing of the applicant's job performance. It was common knowledge that other Soldiers had crossed the border on several occasions without severe repercussions. The term swept under the rug was often used. The difference was that he was an up and coming African American officer while the others were non-minority personnel. He was also the subject of subtle discrimination on several occasions because he was married to a white woman.

g. What most people who did not serve on the board mission in West Germany don't know is that the border was not a well-marked, walled, and fenced area. The actual border was an imaginary line identified by small blue and white poles spaced

every 100 to 200 meters along the border trace. The border was crossed and recrossed without incident. Minority Soldiers like himself were punished in harsher times than their non-minority peers. This accusation is confirmed by other commanders, such as the two that have written letters to support his efforts to have his discharge upgraded. Both officers retired as distinguished combat veterans; one was a colonel and one a lieutenant general.

h. Upon the applicant's return to civilian life he has served his community as a public school teacher. He completed his master's degree in education and has taught thousands of children throughout his successful 34 year career. He has coached hundreds of children in football, wrestling, baseball, lacrosse, and girls' softball. Many times, he has been asked to speak to his school on the virtues of service to our nation.

i. He also served his community as a member of the county child placement review board, reviewing every case that had a child removed from their home due to abuse or neglect. He became a court appointed special advocate, spending several years administering cases that the courts felt needed special attention. He also served as a domestic violence response team member for 15 years. The last 40 years he has had to suffer the embarrassment and indignity of his discharge and hopes the Board will see fit to upgrade it.

3. The applicant provides:

a. Four newspaper features outlining his accomplishment as an ROTC commander, which were previously considered by the Board.

b. Three letters of support provided to his chain of command in 1984 for consideration in his discharge proceedings, also previously considered by the Board.

c. His chain of command recommendation memoranda reflecting general, under honorable recommendations of character of service.

d. A letter of recommendation from the principal of his school, previously considered by the Board.

e. A Masters in the Arts of Teaching Certificate, dated August 1999.

f. A Certificate of Training as a Domestic Violence Response Team Volunteer, dated 16 December 2003.

g. A Peace Award for commitment to support work with domestic violence survivors, dated 29 October 2013

h. A letter of support from Retired (Ret) Colonel [REDACTED] a former commander who served with the applicant both as a senior commander in ROTC, and as a commander in the same theater with the applicant. His letter outlines, in part, specific details surrounding the discharge and provides some context to the behind the scenes process. He notes there was an informal rite of passage for young cavalry officers to prove courage in the face of an enemy. He further notes discrimination in the Army at the time. He states the discipline was professional but the extent of it was taken too far. The full letter of support is available for Board review.

i. A letter of support from Ret Lieutenant General [REDACTED] 19 January 2024, in which he strongly supports the request for upgrade based on equity and propriety. This letter of support also references a rite of passage as being quite common in the Army of the early 1980s. The applicant acknowledged his mistakes and accepted responsibility for his actions. He also notes that some of the officers in the chain of command might have been influenced by discrimination. It has been fairly well-documented that historically, Uniform Code of Military Justice (UCMJ) punishments for Black officers were, on balance, more severe than those for Soldiers from other racial groups. By the early 1980s, the Army had made great strides to reduce institutional systemic racism, while subtle discrimination social and professional was pervasive and was fairly common. The full letter of support is available for Board review.

j. An undated outstanding service award.

k. A letter of confirmation of service as a court appointed special advocate, dated 12 February 2024.

4. A review of the applicant's service records reflect:

a. On 21 May 1981, he was appointed as a Reserve commissioned officer from a ROTC program. He continued at this university for another year as a member of the U.S. Army Reserve Control Group (Inactive).

b. On 29 May 1982, he was commissioned as a second lieutenant in the Regular Army, Armor Corps.

c. On 19 February 1983, he was assigned a platoon leader duty role of 2nd Squadron, 11th Armored Cavalry Regiment, Germany.

d. The DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers), dated 28 June 1984, reflecting the findings, recommendations, and final report of an investigating officer (IO) is not present in the available records. The available records reflect that 15 statements were taken from officers and enlisted Soldiers by an IO in connection with a final report. These statements outline the detail of an

unauthorized border crossing incident between West/East Germany occurring on 25 May 1984, and involving multiple service members from G Troop, 2nd Squadron, 11th Armored Cavalry Regiment. Of those statements, the applicant, then as the senior member of a patrol, was suspected to have crossed the border between West Germany into East Germany in violation of a lawful general order, participated in the removal and theft of a brass plaque which demarcated the country limits, and participated in multiple other violations of the UCMJ; along with other Soldiers to which he was the most senior Soldier present. These statements are accompanied by photographs taken by one of the Soldiers who also provided a statement.

e. On 11 July 1984, court-martial charges were preferred against the applicant. A DD Form 458 (Charge Sheet) reflects that while serving at G Troop, 2d Squadron, 11th Armored Cavalry, Germany, he was charged with

(1) Charge I, Specification: violation of Article 80 of the UCMJ, in that on or about 25 May 1984, near Eubenhause, Germany, attempting to steal a border marking plaque, property of the German Democratic Republic by trying to pry said border marking plaque from the post it was fastened upon, with an ax and screwdriver;

(2) Charge II, Specification: violation of Article 81 of the UCMJ, in that on or about 25 May 1984, near Eubenhause, Germany, conspire with three other Soldiers to commit two offenses under the UCMJ of larceny of a border marking plaque; and he did assist three other Soldiers in stealing said border plaque, property of the German Democratic Republic;

(3) Charge III, Specification 1: violation of Article 92 of the UCMJ, in that on or about 25 May 1984, once near Eubenhause, Germany, and once near Rapperhausen, Germany, violate a lawful general Order Number 2-18, by crossing into the East/West German Interzonal Border into the German Democratic Republic;

(4) Charge III, Specification 2: violation of Article 92 of the UCMJ, in that on or about 25 May 1984, dereliction of duty by willfully allowing service members junior in rank to him to cross once near Eubenhause, Germany, and once near Rapperhausen, Germany, into the East/West German Interzonal Border into the German Democratic Republic;

(5) Charge III, Specification 3: violation of Article 92 of the UCMJ, in that on or about 25 May 1984, dereliction of duty as the senior member of a patrol along the East/West German Interzonal Border willfully failed to report an illegal crossing, once near Eubenhause, Germany, and once near Rapperhausen, Germany, of the Border by U.S. Forces personnel;

(6) Charge IV, Specification 1: violation of Article 92 of the UCMJ, in that on or about 25 May 1984, theft of one border marking plaque near Rapperhausen, Germany, the property of the German Democratic Republic;

(7) Charge IV, Specification 2: violation of Article 92 of the UCMJ, on or about 25 May 1984, near Wollbach, Germany, steal one roll of Kodacolor 400 film the value of about \$4.00, property of a Soldier;

(8) Charge V, Specification 1: violation of Article 133 of the UCMJ, in that on or about 25 May 1984, near Eubenhause, Germany, by attempting to steal one border plaque, by prying the border plaque from the post in was fastened upon with an ax and screwdriver, the property of the German Democratic Republic;

(9) Charge V, Specification 2: violation of Article 133 of the UCMJ, on or about 25 May 1984, by conspiring with three Soldiers to commit two offenses under the UCMJ; by larceny of a border plaque near Eubenhause, Germany, and violation of U.S. Army Europe Operations Order Number 2-18, not to cross the East/West German Interzonal Border, and to effect the object of said conspiracy, did proceed with three Soldiers across the East/West German Interzonal Border;

(10) Charge V, Specification 3: violation of Article 133 of the UCMJ, in that on or about 25 May 1984, by once near Eubenhause, Germany, and once near Rapperhausen, Germany, violation of U.S. Army Europe Operations Order Number 2-18, not to cross the East/West German Interzonal Border;

(11) Charge V, Specification 4: violation of Article 133 of the UCMJ, in that on or about 25 May 1984, once near Eubenhause, Germany, and once near Rapperhausen, Germany, by allowing service members junior in rank to him to cross the East/West German Interzonal Border;

(12) Charge V, Specification 5: violation of Article 133 of the UCMJ, in that on or about 25 May 1984, once near Eubenhause, Germany, and once near Rapperhausen, Germany, while a senior member of a patrol along the East/West German Interzonal Border, willfully fail to report an illegal crossing of the Border by U.S. Forces personnel;

(13) Charge V, Specification 6: violation of Article 133 of the UCMJ, in that on or about 25 May 1984, near Rapperhausen, Germany, steal one border marking plaque, the property of the German Democratic Republic;

(14) Charge V, Specification 7: violation of Article 133 of the UCMJ, in that on or about 25 May 1984, near Wollbach, Germany, steal one roll of Kodacolor 400 film, the value of about \$4.00, property of a Soldier;

(15) Charge V, Specification 8: violation of Article 133 of the UCMJ, in that on or about 25 May 1984, near Rapperhausen, Germany, wrongfully solicit Sergeant (Sgt) [REDACTED] to steal one roll of Kodacolor 400 film, a value of about \$4.00, the property of another Soldier, by instructing Sgt [REDACTED] to confiscate the film;

(16) Charge V, Specification 9: violation of Article 133 of the UCMJ, in that on or about 27 June 1984, at Daley Barracks, Bad Kissingen, Germany, wrongfully endeavor to influence the testimony of Sgt [REDACTED] Specialist 4 (Sp4) [REDACTED] and Sp4 [REDACTED] in the case of the 25 May 1984 alleged border violation, by instructing said witnesses not to testify truthfully concerning their knowledge of the alleged border incident;

(17) Charge V, Specification 10: violation of Article 133 of the UCMJ, in that on or about 27 June 1984, at Daley Barracks, Bad Kissingen, Germany, wrongfully subscribe under lawful oath a false statement, in substance, "I have no knowledge of an alleged border violation on or about 25 May 1984";

(18) Charge VI, Specification 1: violation of Article 134 of the UCMJ, in that on or about 27 June 1984, at Rapperhausen, Germany, wrongfully solicit Sgt [REDACTED] to steal one roll of Kodacolor 400 film, a value of about \$4.00, the property of another Soldier, by instructing Sgt [REDACTED] to confiscate the film;

(19) Charge VI, Specification 2: violation of Article 134 of the UCMJ, in that on or about 27 June 1984, at Daley Barracks, Bad Kissingen, Germany, wrongfully endeavor to influence the testimony of Sgt [REDACTED] Specialist 4 (Sp4) [REDACTED] and Sp4 [REDACTED] as witnesses before the Army Regulation 15-6 Investigating Officer, by instructing said witnesses to not testify truthfully concerning their knowledge of the alleged border incident; and

(20) Charge VI, Specification 3: violation of Article 134 of the UCMJ, in that on or about 27 June 1984, at Daley Barracks, Bad Kissingen, Germany, wrongfully subscribe under oath, a false statement in substance as follows: "I have no knowledge of an alleged border violation on or about 25 May 1984."

f. On 11 July 1984, the Squadron Commander, 2d Squadron, 11th Armored Cavalry Regiment, recommended trial by General Court Martial.

g. On the same date, the applicant's counsel requested a delay in the Article 32 Investigation and the proceedings to give the Department of the Army time to take action on a resignation for the good of the service.

h. On 6 August 1984, he voluntarily requested discharge for the good of the service under the provisions of Army Regulation 635-120 (Officer Resignations and Discharges). In his memorandum, he elected not to present any matters in explanation,

mitigation, or defense of his case and he elected to remain silent. He stated and he understood that his request could be considered as being under less than honorable conditions and that he could receive an under other than honorable conditions characterization of service. He was counseled that he could lose entitlement to payment for accrued unused leave and no severance or readjustment pay as well as that he could be barred from many Veterans benefits administered by the Veterans Administration.

i. On an unspecified date, the Commanding Officer, Headquarters and Headquarters Troop, recommended approval of his request for resignation for the good of the service with a general, under honorable characterization of service.

j. On 27 August 1984, the Commanding Officer, 2nd Squadron, recommended approval of his request for resignation with a general, under honorable characterization of service.

k. On 28 August 1984, the Commanding Officer, 11th Armored Cavalry Regiment, recommended approval of his request for resignation and concurred with the recommendations of the subordinate commanders.

l. On 29 August 1984, Commanding Officer, VII Corps, recommended approval of his request for resignation with an under other than honorable conditions discharge.

m. On 13 September 1984, the Commanding Officer, 3d Infantry Division, recommended approval of his request for resignation with an under other than honorable conditions discharge, and forwarded his recommendation to Headquarters, Department of the Army.

n. On 5 October 1984, the Army Ad Hoc Review Board, Army Council of Review Boards, Department of the Army, recommended that his request for resignation be accepted and approved with issuance of a under other than honorable conditions discharge.

o. On 15 October 1984, the Acting Deputy Assistant Secretary (DA Review Boards and Personnel Security) approved his request for resignation and directed that he be discharged with an under other than honorable conditions characterization of service.

p. On 4 December 1984, the applicant was discharged. His DD Form 214 reflects he was discharged under the provisions of Army Regulation 635-120, Chapter 5, by reason of conduct triable by court-martial with a characterization of under other than honorable conditions, with separation code BFS. He completed 2 years, 6 months, and 9 days of net active service. He was awarded or authorized the Army Service Ribbon,



Sharpshooter Marksmanship Qualification Badge with Pistol Bar (.45 caliber), Parachutist Badge, Ranger Badge, and Air Assault Badge.

5. On 24 June 1986, he appeared with counsel before the Army Discharge Review Board and after he and counsel presented testimony and evidence, the Board determined his discharge was both proper and equitable and voted to deny relief.

6. On 25 July 2000, and in ABCMR Case Number AR1999032268, the Board found insufficient relevant evidence to demonstrate the existence of probable error or injustice. His request for relief was denied.

7. In reaching its determination, the Board can consider the applicant's petition and 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 warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. The evidence of record shows the applicant was charged with commission of offenses (theft, conspiracy, larceny, illegally crossing border, violation of general orders, fail to report an illegal crossing of the Border by U.S. Forces personnel; wrongfully endeavor to influence the testimony, and making false statements) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-120, chapter 5. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in the applicant's available separation processing.

b. The Board also considered his submission in support of a clemency determination. He provides his Masters in the Arts of Teaching Certificate, a Certificate of Training as a Domestic Violence Response Team Volunteer, and a Peace Award for commitment to support work with domestic violence survivors. He also provides letters of support that support upgrading his discharge. One author believes the discipline against the applicant was professional but the extent of it was taken too far. Another author states the applicant acknowledged his mistakes and accepted responsibility for his actions. The Board found his submission persuasive in support of a clemency determination. Therefore, the Board determined that while the applicant's service clearly

did not rise to the level required for an honorable discharge; however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board also determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant amendment of the ABCMR's decision in Docket Number AR1999032268, 25 July 2000. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant DD Form 214 for the period ending 4 December 1984 as follows:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

12/20/2024

X

CHAIRPERSON

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 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.

2. Army Regulation 635-120 (Officer Resignations and Discharges), in effect at the time implemented the statutory provisions of Title 10, U.S. Code, governing officer separations and provides policies and procedures for separating officers from active duty.

a. Chapter 5 of this regulation provided that an officer may submit a resignation for the good of the service when court-martial charges are preferred against the officer with a view toward trial by general court-martial, the officer is under suspended sentence of dismissal, or the officer elects to tender a resignation because of reasons outlined in Army Regulation 635-100 (Personnel Separations – Officer Personnel), paragraph 5-11a(7) (misconduct, moral or professional dereliction) prior to charges being preferred and prior to being recommended for elimination under the provisions of Army Regulation 635-100.

b. The regulation provides that a resignation for the good of the service, when approved at Headquarters, Department of the Army, is normally accepted as being under other than honorable conditions.

3. Army Regulation 600-8-24 (Officer Transfers and Discharges), later superseded Army Regulation 635-120, and the current version has an effective date of 8 March 2020.

a. Chapter 5 stated an officer could submit a resignation for the good of the service when court-martial charges had been preferred with a view toward trial by general court-martial.

b. The regulation additionally stated that a resignation for the good of the service, when approved at Headquarters, Department of the Army (HQDA), normally resulted in an under other than honorable conditions character of service; however, HQDA could also provide an honorable or general discharge, as appropriate.

c. Paragraph 3-9 (Resignation for the Good of the Service in Lieu of General Court-Martial), within AR 600-8-24, addresses resignation in lieu of trial by court-martial. In addition to authorizing officers to submit a resignation in lieu of trial by general court-martial, the regulation states:

(1) When forwarding the officers resignation to HQDA, the commander exercising general court-martial authority will include the following documents:

- Copy of court-martial charges
- Copy of all reports of investigation
- Any documentary evidence that supports acceptance of resignation
- Psychiatric evaluation when grounds exist indicating officer is (or was at the time of the misconduct) mentally incompetent
- Explanation of any delays

(2) "An officer who resigns for the good of the Service (regardless of the character of service received) is barred from rights under laws administered by the Veterans Affairs based on the period of service from which the officer resigned. Exceptions are War Risk, U.S. Government (converted), National Service Life Insurance, or Service Member's Group Life Insurance (see (Title) 38 (Veterans' Benefits), USC (United States Code), (section) 1965 (Definitions))."

4. Army Regulation 635-100 (Personnel Separations – Officer Personnel), then in effect, provided the authority for the separation of commissioned and warrant officers from the Active Army.

a. Chapter 1-6 provided 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. Normally an officer's service is characterized as honorable when the officer is released from active duty and returned to U.S. Army Reserve or Army National Guard control unless circumstances exist as indicated, or as directed by the Secretary of the Army or Headquarters, Department of the Army.

c. An officer's service normally will be characterized as under honorable conditions or under other than honorable conditions when such a determination is made by a Department of the Army Active Duty Board for officers being released from active duty because of misconduct, moral or professional dereliction.

//NOTHING FOLLOWS//