

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 November 2024

DOCKET NUMBER: AR20240004623

APPLICANT REQUESTS: 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)
- DD Form 214 (Report of Separation from Active Duty)
- College Transcripts
- Department of the Interior of Bureau of Land Management Certified Federal Surveyor Certificate
- Certificate of State Registered Professional Land Surveyor in the following States: Arizona, California, and Montana

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 served honorably. Since his separation he has been a good respectable citizen. He has become a licensed professional in multiple jurisdictions in the same occupation he had during his military service and has been in good standing for 45 years. He is requesting to upgrade his discharge to honorable.
3. The applicant provided the following documents:
  - A copy of his transcripts indicating he was granted an Associate of Arts in Biblical Studies with a graduation date of 4 May 1984.
  - A certificate from Department of the Interior of Bureau of Land Management certifying the applicant as a Federal Surveyor on 6 February 2009.
  - Three copies of Board registered professional Land Surveyor licenses in three states

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

a. He enlisted in the Regular Army on 18 November 1976.

b. He served in Germany from 16 March 1977 to 27 February 1979.

c. He accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice on or about the following dates:

(1) 20 May 1978, failure to go to his appointed place of duty; his punishment included reduction to private/E-1.

(2) 15 December 1978, failure to go at the time prescribed to his appointed place of duty, his punishment included reduction to private first class/E-3.

(3) 30 January 1979, twice failing to go to his appointed place of duty; his punishment included reduction to private/E-2

d. On 2 February 1979, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 5, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) paragraph 5-31 Expeditious Discharge program. The specific reasons for failure to meet the minimum acceptable standards of conduct and efficiency for enlisted personnel in the United States Army.

e. The applicant acknowledged the notification of his proposed discharge on the same day and the following:

- he was provided the opportunity to consult with an officer of the Judge Advocate General's Corps
- he may encounter substantial prejudice in civilian life if a discharge under honorable conditions is issued to him
- he may, prior to the date the discharge authority approves his discharge, withdraw his voluntary consent to this discharge

f. The immediate commander initiated separation action against the applicant for expeditious discharge program (EDP) for failure to maintain acceptable standards for retention. He recommended that his period of service be characterized as general, under honorable conditions.

g. On 14 February 1979, consistent with the chain of command recommendations the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 5, AR 635-200, paragraph 5-31 for failure to

maintain acceptable standards for retention. He would be issued a general, under honorable conditions discharge.

h. On 28 February 1979, he was discharged from active duty. His DD Form 214 shows he was discharged in accordance with a general, under honorable conditions characterization of service. His DD Form 214 shows he completed 2 years, 3 months, and 11 days of active service. He was assigned the narrative reason for separation listed as "expeditious discharge program (EDP) for failure to maintain acceptable standards for retention." It also shows he was awarded or authorized:

- Expert Marksmanship Qualification Badge with Rifle Bar
- Expert Marksmanship Qualification Badge with Hand Grenade

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. 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 DoD guidance for liberal consideration of discharge upgrade requests. The available evidence shows the applicant's commander determined the applicant had failed to meet the minimum acceptable standards of conduct and efficiency for enlisted personnel in the Army; he displayed an extremely poor attitude and lack of motivation, and an inability to adapt to military life; and on repeated occasions he wantonly disregarded the authority of the officer and noncommissioned officers appointed over him. As a result, he was separated under the Expeditious Discharge Program with a general characterization of service. The Board found no error or injustice in his separation processing. Although the applicant provides his college transcripts as well as Federal Surveyor certificate and license, the Board determined that given his NJPs, reductions, and disregard to authority at the time, a general, under honorable conditions discharge is the appropriate characterization of his service. Therefore, based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states 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. Paragraph 5-31 (Expeditionary Discharge Program (EDP)) states EDP provides that members who have demonstrated that they cannot or will not meet acceptable standards required of enlisted personnel in the Army because of existence of one or more of the following conditions may be separated. All members separated under this paragraph will be released from active duty and transferred to the IRR to complete their service obligation, except those whom the separation authority.

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 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.

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//