

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 January 2025

DOCKET NUMBER: AR20240004678

APPLICANT REQUESTS: an upgrade of his characterization of service and change his narrative reason for separation.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 4 (Enlistment or Reenlistment Agreement – Armed Forces of the United States), 9 March 1976
- Letter of Appreciation, 25 June 1977
- DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)), 23 January 1978
- DD Form 214 (Report of Separation from Active Duty), 8 March 1979
- Orders Number 05-88742, 15 February 1980
- DD Form 4, 13 August 1980
- Certificate of Achievement, 1981
- Letter of Commendation, 8 June 1981
- DA Form 2627, 4 June 1982
- Certificate of Achievement, illegible and unclear date
- Noncommissioned Officer (NCO) Academy Diploma, 5 February 1982
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 1 September 1982
- DA Form 2-1 (Personnel Qualification Record)

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 is requesting an upgrade to his discharge, and his schools, position as the enlisted aid to the commanding general (3rd Infantry Division), awards, and his dedication to the Army should be taken into consideration.

3. The applicant provides:

a. A letter of appreciation dated 25 June 1977, which shows he was commended by his team commander for his outstanding contribution to the unit during the "SASCOM" Surety Evaluation and the Nuclear Surety Inspection. He demonstrated his ability to excel and was considered as one of the true "SASCOM Professionals."

b. A Certificate of Achievement, which was awarded to the applicant for being selected as the Cook of the Quarter for 2nd Quarter 1981.

c. A letter of commendation dated 8 June 1981, wherein Major General M\_ commended the applicant on his selection as the Division Cook of the Quarter for the 3rd Quarter Fiscal Year 1981.

d. NCO Academy Diploma dated 5 February 1982, which shows the applicant completed the Primary Leadership Course.

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

a. He enlisted in the Regular Army on 9 March 1976.

b. On 23 January 1978, he accepted nonjudicial punishment (NJP) under Article 15, UCMJ, for on or about 18 January 1978, failing to go at the time prescribed to his appointed place of duty. His punishment included reduction to private (PV2)/E-2, suspended for 90 days, and forfeiture of \$100.00 per month for a period of one month.

c. On 8 March 1979, the applicant was honorably released from active duty and transferred to the U.S. Army Reserve (USAR) Control Group (Reinforcement). His DD Form 214 shows he served 3 years of net active service this period. He was released from the USAR Control Group (Reinforcement) on 15 February 1980.

d. On 13 August 1980, he enlisted in the Regular Army for a period of 3 years.

e. On 4 June 1982, he accepted NJP under Article 15, UCMJ for on or about 20 May 1982, failing to go at the time prescribed to his appointed place of duty. His punishment included reduction to private first class (PFC)/E-3 (suspended until 4 August 1982), forfeiture of \$100.00 pay per month for one month, 14 days of extra duty, and 14 days restriction.

f. A DA Form 268 (Report for Suspension of Favorable Personnel Action) dated 13 August 1982, which shows the applicant was flagged due to court-martial action. It states he was pending court-martial action at this time for violation of Article 134.

g. On 17 August 1982, after consulting with legal counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial, under Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10.

(1) He understood that he may request discharge for the good of the service because of the following charge which was preferred against him:

- Charge: Violation of the UCMJ, Article 134
- Specification: on or about 5 May 1982, wrongfully sold hashish

(2) The applicant acknowledged that he made the request of his own free will and was not coerced by any person. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charges against him or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge.

(3) He understood he may be discharged under other than honorable conditions and furnished an under other than honorable discharge certificate. He further understood that he could be deprived of many or all Army benefits, he could be ineligible for many, or all benefits administered by the Veteran's Administration, he could be deprived of his rights and benefits as a veteran under both Federal and State law and encounter substantial prejudice in civilian life because of an under other than honorable conditions discharge. He elected not to submit a statement in his own behalf.

h. On 18 August 1982, the applicant's immediate commander recommended approval of the request for discharge for the good of the service and further recommended an other than honorable discharge. The intermediate commanders echoed this recommendation.

i. On 20 August 1982, the separation authority approved the recommended discharge and stated the charge and specifications were dismissed. He directed the applicant be reduced to the lowest enlisted grade and be issued an under other than honorable conditions discharge.

j. On 30 August 1982, the applicant signed a medical examination for separation statement of options. He elected not to undergo a separation medical examination.

k. The applicant was discharged on 1 September 1982. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, in the rank grade of private/E-1, and his service was characterized as under other than honorable conditions. He completed 2 years and 19 days of net service this period. This form also shows in:

- Item 12c (Total Prior Active Service): 3 years
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Sharpshooter Marksmanship Qualification Badge (M-16 rifle), Army Good Conduct Medal, NCO Professional Development Ribbon with numeral 1, Overseas Service Ribbon, and the Army Service Ribbon
- Item 28 (Narrative Reason for Separation): Admin Discharge Conduct Triable by Court Martial

5. On 15 October 2024, the Director, Case Management Division, ARBA requested un-redacted Inspector General (IG) records. In the applicant's application to the ABCMR, he marked Reprisal/Whistleblower issues were related to his request.

6. On 3 December 2024, the Legal Advisor, Department of the Army Inspector General (DAIG), responded to the request and stated the DAIG records release office searched the Army IG database and did not locate any records responsive to the request.

7. The pertinent Army regulation in effect at the time provided discharges under the provision of AR 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

8. The Board should consider the applicant's statement and overall record in accordance with the published equity, injustice, or clemency determination guidance.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the pattern of misconduct throughout the applicant's period of military service and the lack of any mitigation for such misconduct, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service and/or narrative reason for separation.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//  
 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. 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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
  - a. Chapter 10 provided that a Soldier who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be

submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

3. Army Regulation 635-5-1 (Personnel Separations - Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 10, with a narrative reason "Administrative discharge conduct triable by court-martial" would receive a separation code of JFS.

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.

- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification.
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted.
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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//