

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 December 2024

DOCKET NUMBER: AR20240004793

APPLICANT REQUESTS: in effect, reconsideration of an upgrade of his under other than honorable conditions discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 AR2001051795 on 27 March 2001.
2. The applicant selected in block 10 (Action Requested), "Character of Service" on his DD Form 293. The applicant did not provide any additional comments nor documents.
3. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 27 August 1981.
  - b. His DA Form 2-1 (Personnel Qualification Record) shows the applicant served in Germany from 24 March 1982 through 26 January 1983.
  - c. The applicant accepted nonjudicial punishment for the below listed actions:
    - 16 August 1982 – for disrespectful language toward a superior noncommissioned officer (NCO)
    - 28 October 1982 – for disrespectful language toward a superior NCO; his punishment included reduction to private, PVT/E-1
  - d. On 27 January 1983 the applicant was convicted by a special court-martial of being disrespectful toward a superior commissioned officer and being disrespectful in deportment toward a superior noncommissioned officer. He was sentenced to be

reduced to private (E-1), to forfeit \$382.00 per month for 3 months, and confinement for 3 months.

e. On 3 March 1983 the applicant was assigned to the U.S. Army Correctional Activity for training by Orders 26-138. While assigned to the training program, the applicant was cited for violating the limitations of his physical profile by playing basketball.

f. After 4 weeks in the training program, on 4 April 1983, the applicant's unit commander recommended that he be eliminated from the Army under the provisions of Army Regulation 635-200, chapter 14. He based his reason for separation on the applicant's unsatisfactory performance record and lack of motivation and military attitude to successfully complete the training program.

g. On 14 April 1983, nonjudicial punishment was imposed against the applicant for possession of marijuana. His punishment consisted of a forfeiture of pay (suspended) and extra duty and restriction (suspended).

h. The available service record is void of the separation processing documents.

i. On 18 April 1983, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years, 1 month, and 17 days of active service. He was assigned separation code JKM (JKE) and the narrative reason for separation listed as "Misconduct-pattern of misconduct," with reenlistment codes RE-3B. It also shows he was awarded or authorized:

- Army Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Marksman Marksmanship Qualification Badge with Hand Grenade Bar
- Pathfinder Badge

4. 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.

5. On 27 March 2001, the ABCMR rendered a decision in Docket Number AR2001051795. The Board found there was no evidence of record, and the applicant provided no evidence, to support his contention. The medical evidence of record does show the applicant was diagnosed with a hyperthyroid on 16 February 1983 and was issued a temporary 3 Physical Profile under physical capacity or stamina. This physical profile expired on 1 March 1983. After careful review of the applicant's record of service which included a bar to reenlistment, three nonjudicial punishments and one special

court-martial, the Board determined that his quality of service did not meet the standards of acceptable conduct and performance of duty for Army personnel. Therefore, the applicant was not entitled to an honorable discharge.

6. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

7. 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 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 Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant had three records of nonjudicial punishment, a conviction by special court-martial, and possessed marijuana. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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 amendment of the ABCMR decision rendered in Docket Number AR2001051795 on 27 March 2001.

3/26/2025

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 635-200 (Personnel Separations – Enlisted Personnel), 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 3-7b (General Discharge) states 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.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

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//