

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 January 2025

DOCKET NUMBER: AR20240004805

APPLICANT REQUESTS: upgrade of his under honorable conditions (general) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- 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, 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 service was honorable and correction to his service records is warranted.
3. On 20 March 1985, the applicant enlisted in the Regular Army for 4 years. The highest grade he attained was E-2.
4. Before a summary court-martial on 19 March 1986, at Darmstadt, Germany, the applicant was found guilty of three specifications of failing to go to his appointed place of duty on 2 February 1986, and 26 February 1986; one specification of obtaining services under false pretenses on 9 February 1986; and three specifications of breaking restriction on 7 March 1986, 9 March 1986, and 9 February 1986.
5. The court sentenced him to forfeiture of \$250.00 and 30 days confinement.
6. The applicant received formal counseling on the following dates/for:
 - 29 October 1985, sleeping on duty
 - 31 October 1985; lack of military bearing; appearance not to standard

7. On 6 November 1985, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for failing to go at the time prescribed to his appointed place of duty, on or about 31 October 1985; and being derelict in the performance of his duties, on or about 29 October 1985. His punishment included reduction to E-1, forfeiture of \$149.00 pay per month for one month, and 14 days restriction and extra duty.

8. The applicant received additional counseling on the following dates/for:

- 2 November 1985; poor attitude, job performance
- 5 November 1985; missing formation
- 15 November 1985; failing to be at his appointed place of duty
- 2 December 1985, failing to be at his appointed place of duty
- 8 December 1985; missing formation
- 9 December 1985; missing formation

9. On 27 December 1985, the applicant accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty, on three separation occasions; willfully disobeying a lawful command, on or about 12 November 1985; and on or about 6 December 1985. His punishment included forfeiture of \$149.00 pay per month for one month, and 14 days restriction and extra duty.

10. The applicant received additional counseling 3 January 1986, for breaking restriction.

11. On 14 January 1986, the applicant's commander notified the applicant that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13, for unsatisfactory performance. As the specific reasons, the commander noted the applicant's history of unsatisfactory performance as demonstrated by his multiple NJPs. The applicant demonstrated a definite lack of promotion potential and had further demonstrated an apathetic attitude towards the Army in general.

12. On 21 January 1986, the applicant acknowledged he had been afforded the opportunity to consult with counsel for consultation. He waived consideration of his case by a board of officers. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him. He further understood he would be ineligible to apply for enlistment in the U.S. Army for a period of two years after discharge.

13. The applicant's commander formally recommended his elimination from the Army under the provisions of Army Regulation 635-200, Chapter 13.

14. The separation authority approved the recommended separation action and directed the applicant's discharge with issuance of an under honorable conditions (general) discharge.

15. On 13 February 1986, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

16. The applicant was discharged on 2 May 1986. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 13, for unsatisfactory performance. His service was characterized as under honorable conditions (general). He completed 1 year, 1 month, and 13 days of net active service this period.

17. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency 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 short term of honorable service completed prior to a pattern of misconduct leading to the applicant's separation, as well as a lack of mitigation or post-service character evidence, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

X //SIGNED//

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) sets forth the requirements for the administrative separation of enlisted personnel. The version in effect at the time provided that:
 - a. 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. Chapter 13 provided for separation due to unsatisfactory performance when in the commander's judgment the individual would not become a satisfactory Soldier; retention would have an adverse impact on military discipline, good order and morale; the service member would be a disruptive influence in the future; the basis for separation would continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, was unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation would be characterized as honorable or under honorable conditions.

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/NR) 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.

//NOTHING FOLLOWS//