

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 January 2025

DOCKET NUMBER: AR20240004999

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under other than honorable conditions discharge. Also, an in-person appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Request for discharge
- Recommendation for separation
- AR20220000155 ROP, 1 June 2022
- Employment experience letter
- Support letter (M.G.)
- Support letter (C.J.G.)

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 AR20220000155 on 1 June 2022.

2. The applicant states he request reconsideration for upgrade of his military discharge. He served proudly for the Army of the United States of America. He asks that consideration of the totality of his service be considered, along with submitted evidence of proof of payment from the incident, the otherwise honorable service, and continued efforts since to be an honest and exemplary citizen of this great country. Also, contrary to what was noted in the decision dated 7 April 2023, his military personnel file does indeed have the specific facts surrounding his discharge, and a copy of the circumstances and proof that repayment of money was made is being provided. An in-person hearing is being respectfully requested.

3. The applicant enlisted in the Regular Army on 29 December 1981. He held military occupational specialty 75B10 (Personnel Administration Specialist).

4. He served in Panama from 20 May 1982 to 6 March 1984.

5. The applicant received non-judicial punishment, under Article 15 of the Uniform Code of Military Justice, on 3 May 1982, for stealing a pair of sunglasses at Fort Benjamin Harrison, IN of a value of about \$9.60, the property of the Army and Air Force Exchange Service, on or about 15 August 1982.

6. His record is void of DD Form 458 (Charge Sheet) for review.

7. The applicant's record is void of the separation action. However, the applicant provides:

a. Request for discharge that is partially visible which shows he voluntarily requested discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10 for the charges and specifications of:

(1) Failure to obey an order and its specification of on or about 31 July 1983, was derelict in the performance of his duties in that, after having received \$4,450.00 in rent plus payment from the Finance and Accounting Office, he willfully failed to notify the Housing and Finance and Accounting Offices, that he was not renting the apartment for which he had received advanced rent plus payment, as it was his duty to do so thereby, depriving the United States of the use and benefits of \$4,450.00.

(2) Larceny and wrongful appropriation and its specification of on or about 3 March 1983, steal \$4,450.00, the money of the United States.

(3) Retaliation and its specification of on or about 23 February 1983 to on or about 21 April 1983, use certain writing to create a false and fraudulent rental contract.

b. Recommendation for separation with an other than honorable discharge on 20 January 1984.

8. He was discharged on 7 March 1984, under other than honorable conditions. He completed 2 years, 2 months, and 9 days net active service this period. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows:

- Item 25 (Separation Authority): AR 635-200, chapter 10
- Item 26 (Separation Code): KFS
- Item 27 (Reenlistment Code): RE-3, 3C
- Item 28 (Narrative Reason for Separation): For the Good of the Service – In Lieu of Court Martial

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

10. On 1 June 2022, in ABCMR Docket Number AR20220000155, the Board considered his application but determined the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned. The Board denied his request.

11. The applicant provides:

a. Employment experience letter describing the various types of employment experiences he had obtained during the past 40 years, working overseas and in the United States, since leaving the military. (The entire letter is available for review in documents).

b. Support letter (M.G.) his spouse describing his character a person with a good moral character, who comes from a strong family value. The family has always believed in hard work, integrity, goodwill toward others, and their country - he has retained all those beliefs. (The entire letter is available for review in documents).

c. Support letter (C.J.G.) his son describing his character, mistake and resolve since his discharge. (The entire letter is available for review in documents).

12. By regulation, AR 15-185 (Army Board for Correction of Military Records (ABCMR)) states ABCMR members will review all applications that are properly before them to determine the existence of an error. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

13. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

14. 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:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's request and available military records, the Board determined there is insufficient evidence to support the applicant's contentions for reconsideration of his discharge upgrade.

2. The record shows the applicant received non-judicial punishment under Article 15 for theft and serious allegations of larceny, wrongful appropriation, and falsification of documents involving \$4,450.00 in government funds. Although the separation packet is incomplete, the applicant's own submission confirms he voluntarily requested discharge under the provisions of AR 635-200, chapter 10, in lieu of trial by court-martial. The Board noted, the applicant did not provide documentation verifying repayment of the debt central to the misconduct charges. The Board acknowledges the applicant's character references and employment history reflecting personal growth and post-service contributions since discharge, however, the seriousness of the offenses and lack of evidence to mitigate or refute the original basis for separation do not support a change in characterization. Therefore, the Board determined that the overall merits of the case remain insufficient to reverse the previous board determination.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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:

he Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20220000155 on 1 June 2022.

X //SIGNED//

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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 (AR) 15-185 (ABCMR) 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, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

2. AR 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is

authorized, a discharge under other than honorable conditions is normally considered appropriate.

a. Paragraph 3-7a (1) 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) 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. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and 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. 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 on the basis of 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. 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//