

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 February 2025

DOCKET NUMBER: AR20240005803

APPLICANT REQUESTS: an upgrade of his characterization of service.

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)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 10 May 1982
- Reference Letter C_G_, undated
- Reference Letter K_S_, undated

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 of this discharge because he wants to apply for Veterans Affairs benefits to include healthcare.
3. The applicant provides:
 - a. A reference letter from Ms. C_G_, Manager, Salvation Army Thrift Store, which states the applicant has been with the Salvation Army Thrift Store for several years. Ms. C_G_ states the applicant has a good work ethic, and he is an asset to the company. He is a kind and caring person who is willing to step up and help whoever is in need.
 - b. A reference letter from Ms. K_S_, Office Manager, Food for Less PC INC, which states the applicant was an excellent employee when he worked for the company. He was always extremely courteous, helpful, and very reliable.

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

a. He enlisted in the Regular Army on 18 January 1978.

b. On 23 June 1978, he accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for being AWOL from on or about 23 May 1978 to on or about 22 June 1978. His punishment included forfeiture of \$100.00 per month for two months.

c. The applicant was discharged on 24 August 1980 for immediate reenlistment on 25 August 1980.

d. The applicant's duty status changed on the following dates:

- Present for Duty (PDY) to Ordinary Leave (OLV) – 17 April 1981
- OLV to Absent Without Leave (AWOL) – 22 April 1981
- AWOL to PDY – 24 April 1981

e. On 27 April 1981, he accepted NJP under the provision of Article 15, UCMJ, for being AWOL from on or about 22 April 1981 to on or about 24 April 1981. His punishment included forfeiture of \$50.00, 14 days extra duty, and 14 days restriction.

f. The applicant's duty status changed on the following dates:

- PDY to AWOL – 9 September 1981
- AWOL to PDY – 25 September 1981

g. On 25 September 1981, he accepted NJP, under Article 15, UCMJ for being AWOL from on or about 10 September 1981 to on or about 25 September 1981. His punishment included to be reduction to the grade of private (PV2)/E-2.

h. His duty status changed on the following dates:

- PDY to AWOL – 5 October 1981
- AWOL to PDY – 14 October 1981
- PDY to AWOL – 19 October 1981
- AWOL to Confined Military Authorities (CMA) – 22 October 1981
- CMA to PDY – 20 November 1981

i. Special Court-Martial Order Number 56, issued by Headquarters, 197th Infantry Brigade (Separate), Fort Benning, GA on 21 December 1981, shows the applicant was found guilty of being AWOL from on or about 5 October 1981 to on or about 11 October 1981 and from on or about 19 October 1981 to on or about 21 October 1981. The court

sentenced the applicant to forfeiture of \$100.00 for one month, 30 days extra duty, and 30 days restriction.

j. The applicant's duty status changed on the following dates:

- PDY to AWOL – 21 December 1981
- AWOL to PDY – 22 December 1981
- PDY to AWOL – 24 December 1981
- AWOL to PDY – 4 January 1982
- PDY to CMA – 4 January 1982 (placed in pre-trial confinement)

k. A Report of Result of Trial, dated 19 February 1982, shows a trial by Special Court-Martial on 17 February 1982 at Fort Benning, GA, found the applicant guilty of being AWOL from 21 December 1981 to 22 December 1981 and from 24 December 1981 to 3 January 1982. The court sentenced him to be confined at hard labor for three months, reduction to the grade of private (PV1)/E-1, and forfeiture of \$367 for three months.

l. DA Form 268 (Report for Suspension of Favorable Personnel Actions), dated 3 March 1982, shows the applicant was transferred to Fort Riley, KS to be reassigned. At that time, he was at the Retraining Brigade.

m. Training Progress Notes show the following:

- 4 March 1982 – initial interview with applicant
- 1 April 1982 – contraband (food stuff)
- 7 April 1982 – misconduct/bad attitude
- 13 April 1982 – disposition board; recommended to the commander that the applicant be eliminated from service under Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 14. The board stated the applicant had more than his share of chances to turn around but had not.
- 13 April 1982 – social work assessment
- 14 April 1982 – disruptive influence
- 15 April 1982 – Team Commander concurred with the Disposition Board's recommendation that the applicant be discharged under the provisions of AR 635-200, chapter 14, due to frequent acts of misconduct.
- 23 April 1982 – Unit Commander recommended the applicant be discharged under the provisions of AR 635-200, chapter 14, due to frequent incidents of willful misconduct.

n. The applicant underwent a medical examination on 30 April 1982 for the purpose of separation. The examiner noted the applicant was qualified for retention/separation.

o. The applicant underwent a mental status evaluation. The medical doctor noted the applicant had the mental capacity to understand and participate in proceedings, was mentally responsible, and met the retention requirements of chapter 3, AR 40-501.

p. On an unspecified date, the applicant's immediate commander notified the applicant of his intent to initiate separation actions against him under AR 635-200, chapter 14, for misconduct, and explained his rights.

q. On 27 April 1982, the applicant acknowledged receipt of his commander's separation notification and after being advised by his consulting counsel of the basis for the contemplated action to separate him under AR 635-200, chapter 14, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights.

(1) He waived consulting counsel.

(2) He did not submit statements in his own behalf.

(3) He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him.

(4) He further understood that, as the result of issuance of a discharge under conditions other than honorable, he may be ineligible for many or all benefits as a veteran under both Federal and State laws.

(5) He understood that he may, up until the date the separation authority approves the separation, withdraw the waiver and request that an administrative separation Board hear his case.

(6) He understood that he would be ineligible to apply for enlistment in the United States Army for a period of two years after discharge.

r. The applicant's immediate commander formally recommended approval of the separation under the provisions of AR 635-200, paragraph 14-33, for misconduct – frequent incidents. The intermediate commander echoed this recommendation.

s. On 1 May 1982, the separation authority approved the discharge and directed the applicant be issued an under other than honorable conditions discharge. Further rehabilitation required by AR 635-200 was waived.

t. The applicant was discharged on 10 May 1982. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 14-33b (1), frequent involvement in incidents of a discreditable nature with civil or military authorities, in the

rank/grade of private (PV1)/E-1, and his service was characterized as under other than honorable conditions. Additionally, his DD Form 214 shows in:

- Item 12c (Net Active Service This Period): 1 year, 2 months, and 6 days
- Item 12d (Total Prior Active Service): 2 years, 7 months, and 8 days
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Drivers Badge with tab, Army Good Conduct Medal (1st Award), Army Service Ribbon, Overseas Service Ribbon, Army Commendation Medal, Expert Marksmanship Qualification Badge (45 caliber pistol), and the Expert Marksmanship Qualification Badge (M-16 rifle)
- Item 26 (Separation Code): JKA
- Item 27 (Reentry Code): RE-3B
- Item 29 (Dates of Time Lost During This Period): 810422-810423; 810909-810924; 811005-811013; 811019-811119; 811221-811221; 811224-820103; 820104-820502

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

6. Regulatory guidance states when an individual is discharged under the provisions of Chapter 14, AR 635-200 for misconduct, an under other than honorable conditions characterization of service is normally appropriate.

7. The Board should consider the applicant's 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 warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. One potential outcome discussed was to deny relief based upon the lengthy pattern of misconduct leading to the applicant's separation and the lack of mitigation evidence for such misconduct. However, based upon the misconduct involved and the post-service character evidence showing the applicant has learned and grown from the time of the misconduct, the Board concluded there was sufficient evidence to grant clemency by upgrading the applicant's characterization of service to General, Under Honorable Conditions.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

//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. 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. Paragraph 14-33b of the regulation established the policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of serious offense, conviction by civil authorities, desertion, or absent without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate.

a. Paragraph 3-7a, provided that an honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b, provides that a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

3. AR 635-5-1 (Separation Program Designators (SPD)), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, paragraph 14-33b (1) for Misconduct – frequent incidents of a discreditable nature with civil or military authorities would receive a separation code of "JKA."

4. AR 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//