

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240005837

APPLICANT REQUESTS:

- upgrade of his characterization of service from under honorable conditions (general) to honorable
- change of narrative reason for separation
- an appearance before the Board via video/telephone

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

DD Form 149 (Application for Correction of Military Record), 12 February 2024

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 was a photographer and was assigned to a unit in the 18th Airborne Corps, he knows he did not have the Airborne attitude and he never wanted to jump out of an airplane. He was never apathetic. He had a terrible family life, which caused him tremendous stress, and had to overcome major adversity; however, he was making great strides in his career. He held a top-secret security clearance which he worked hard to maintain.
3. The applicant enlisted in the Regular Army on 14 July 1977, for a 3-year period, extended on 5 December 1980, for an additional 6 months, and reenlisted on 4 September 1981, for an additional 3-year period. He was awarded the military occupational specialties of 15D (Lance Missile Crewman) and 84B (Still Photographic Specialist). The highest rank he attained was specialist fourth class/E-4.
4. The applicant received nonjudicial punishment (NJP) on 3 April 1982, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), for failing to go to his prescribed appointed place of duty on or about 30 March 1980, to wit the base

photo lab. His punishment imposed was forfeiture of 5 days pay, suspended for 30 days and 14 days extra duty.

5. The applicant was imposed a bar to enlistment/reenlistment on 28 April 1982. The commander recommendation shows he received four formal counseling's for the following:

- on or about 11 March 1982 failure to attend remedial physical training program
- on or about 16 March 1982 late for mandatory formation
- on or about 29 March 1982 absent from place of duty, he received NJP
- on or about 30 March 1982 failure to maintain proper military appearance and bearing based on numerous on the spot corrections, he was removed from the order of merit list to attend primary leadership course until his standards improved

6. On 19 May 1982, the applicant received a letter of reprimand for being witnessed using disrespectful and contemptuous language on two separate occasions to two Soldiers, Private First Class G.M.B. and Specialist Fifth Class Z.I.E., on or about 17 May 1982. The applicant's abusive language contained sexual overtones and brought into question his compliance with the Army goal of human relations and equal treatment; the Commander did not condone his behavior.

7. The applicant was referred for a mental health evaluation on 3 June 1982 for determination of retention potential in accordance with Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13 (Separation for Unsuitability or Unfitness). The reason for the referral was the applicant's behavior history, his surly attitude when faced with authority evidenced maladjustment to military environment. He was devious and "nit picking" when skirting issues and/or sought to excuse marginal or substandard performance.

8. He underwent mental health evaluation and on 22 June 1982, the examining psychologist recommended administrative action be based upon his performance of duty and the circumstances involved. The Chief of Hospital Services, stated in his remarks section, the applicant's performance and behavior had become less predictable and unreliable. The current prognosis for successful continued compliance with Army Regulations is, at best, guarded and final disposition was up to the commander.

9. A DA Form 3822-R (Report of Mental Status Evaluation) shows on 24 June 1982, the applicant was found mentally responsible to understand and participate in the proceedings for unsuitability.

10. On 30 August 1982, the applicant's immediate commander notified him of the intent to recommend him for separation under the provisions of AR 635-200, Chapter 13, by

reason of unsuitability. He noted the applicant's demonstrated unsuitability as evidence by his apathy, NJP for absenting himself from duty, letter of reprimand, eight formal counseling's, bar to reenlistment, mental health evaluation, clearance, and his physical examination.

11. On 30 August 1982, the applicant acknowledged the notification of elimination memorandum. On 7 September 1982, he consulted with counsel and was advised of the basis for the contemplated action to separate him and of the rights available to him. He understood he may encounter substantial prejudice in civilian life. He elected to submit a statement in his own behalf; however, the official military personnel file is void of this statement.

12. On 8 September 1982, the applicant's bar to reenlistment had been reviewed and was recommended for approval.

13. On 9 September 1982, the applicant's immediate commander formally recommended his discharge for unsuitability under the provisions of AR 635-200. He stated the discharge was recommended because the applicant displayed a failure to adapt to accepted standards and apathy toward rehabilitative measures.

14. On 17 September 1982, the applicant's intermediate commander recommended approval of the separation action and additionally concurred with the bar to reenlistment.

15. On 21 September 1982, the separation authority approved the recommended discharge for unsuitability and directed the issuance of an under honorable conditions (general) discharge.

16. The applicant was discharged on 1 October 1982, under the provisions of AR 635-200, paragraph 13-4c(2), for unsuitability – apathy, defective attitude or inability to expend effort constructively. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his service was characterized as under honorable conditions (general), with separation code of JMJ and reenlistment code RE-3. He was credited with 4 years, 9 months, and 29 days of total active service with time lost from 25 October 1979 to 20 March 1980. He was awarded or authorized the Army Service Ribbon, Marksman Qualification Badge (Rifle M-16), and Overseas Service Ribbon.

17. AR 635-200, in effect at the time, set forth the basic authority for separation of enlisted personnel for unfitness or unsuitability. Soldiers may be separated under the provision of AR 635-200, Chapter 13, when it is determined that they are unqualified for further military service due to unsuitability.

18. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, 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 leading to the applicant's separation and the current characterization of service reflected on the applicant's DD Form 214, the Board concluded there is insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service and/or changing the narrative reason for separation.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

**BOARD DETERMINATION/RECOMMENDATION:**

1. 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.
2. Prior to closing the case, the Board noted the administrative notes below from the analyst of record and recommended those changes be completed to more accurately reflect the military service of the applicant.

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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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214 for the period ending 1 October 1982, is missing important entries that may affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 770714 UNTIL 810903

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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 basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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 in effect at the time established policy and provided procedures and guidance for eliminating enlisted personnel found to be unfit or unsuitable for further military service. It provided for the separation of individuals for unsuitability whose record evidenced apathy (lack of appropriate interest), defective attitudes, and an inability to expend effort constructively. When separation for unsuitability was warranted, an honorable or general discharge was issued as determined by the separation authority based upon the individual's entire record. Paragraph 13-5b provided for the separation of Soldiers for unsuitability.

(1) Sub-paragraph (1) applied to those Soldiers being separated for inaptitude.

(2) Sub-paragraph (2) applied to those Soldiers being separated for character and behavior disorders [later deemed personality disorders].

(3) Sub-paragraph (3) applied to those Soldiers being separated for apathy (lack of appropriate interest), defective attitudes, and inability to expend effort constructively.

c. 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.

d. 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.

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.

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 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//