

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 December 2024

DOCKET NUMBER: AR20240005959

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his general under honorable conditions discharge. Also, 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)

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 AR20220003911 on 13 September 2022.
2. The applicant states he was discharged under honorable conditions. He was not given a chance to appeal his case.
3. The applicant enlisted in the Regular Army on 22 July 1980. He was awarded military occupational specialty 36K (Tactical Wire Operations Specialist).
4. On 19 May 1981, he received non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) for on or about 7 March 1981, unlawfully striking another Soldier in the face with a closed fist and striking Mrs. P.H. with an open hand.
5. On 1 September 1981, he received NJP under Article 15, of the UCMJ for:
 - On or about 18 July 1981, disobeyed a lawful order and being disrespectful in language to his superior noncommissioned officer
 - Participating in a breach of peace by engaging in a fight
 - On or about 19 July 1981, unlawfully striking a female on the head with his fists repeatedly
 - On or about 17 August 1981, wrongful use of marijuana

- He was reduced to private/E-1 (suspended for 90 days)
- He appealed his punishment and on 21 September 1981, the next higher commander determined the proceedings were conducted in accordance with law and regulation and the punishments imposed were not disproportionate to the offenses committed

6. On 5 October 1981, his suspended reduction was vacated for misconduct.
7. On 20 November 1981, the applicant was found guilty by a Summary Court-Martial of unlawfully grabbing another Soldier by the arm and communicating a threat, on or about 3 October 1981. His sentence included reduction in rank to private/E-1 and confinement at hard labor for 30 days.
8. Summary Court-Martial Order Number 27, issued by Headquarters, Seventh Army Training Command, APO New York on 23 November 1981 shows the convening authority approved the sentence and ordered it duly executed. He was to be confined at U.S. Army Retraining Brigade, Fort Riley, KS or elsewhere as competent authority may direct.
9. His duty status was changed from confined to military authorities to present for duty on 14 December 1981. On 27 January 1982, the applicant was reassigned to Fort Eustis, VA.
10. On 6 June 1982, the applicant received NJP under Article 15 of the UCMJ for on or about 17 June 1982, failed to go at the time prescribed to his appointed place of duty. He was reduced to private/E-2.
11. On 22 September 1982, the applicant received NJP under Article 15 of the UCMJ for on or about 18 July 1982, conspired with two other Soldiers to commit larceny and damage property. He was reduced to private/E-1
12. On 23 September 1982, the applicant's commander notified the applicant that he was initiating actions to separate him from service under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), paragraph 5-31, under the Expedited Discharge Program (EDP), with an under honorable conditions discharge. The specific reason for his proposed action was his inability to adapt socially or emotionally to the U.S. Army. He acknowledged the same day. He was advised of the rights available to him and the effect of waiving his rights. He voluntarily consented to the separation and elected not to submit a statement in his own behalf.
13. He underwent a separation physical examination on 24 September 1982, which shows he was qualified for discharge.

14. His commander recommended he be separation from service under the provisions of Army Regulation 635-200, paragraph 5-31, and furnished a General Discharge Certificate.

15. On 28 September 1982, the separation authority approved the recommended action and directed the issuance of a General Discharge Certificate.

16. Accordingly, the applicant was discharged under honorable conditions on 4 October 1982, under the provisions of Army Regulation 635-200, paragraph 5-31h (2). His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years, 1 month, and 19 days of active service this period. It also shows:

- Item 26 (Separation Code): JGH
- Item 27 (Reenlistment Code): RE-3 & 3B
- Item 28 (Narrative Reason for Separation): EDP, failure to maintain acceptable standards for retention
- Item 29 (Dates of Time Lost During this Period): 811120 – 811213 (20 November 1981 – 13 December 1981)

17. 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.

18. On 13 September 2022, in ABCMR Docket Number AR20220003911, 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.

19. 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.

20. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. EDP will provide for the expeditious elimination of substandard, nonproductive soldiers before board or punitive action becomes necessary.

21. 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 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 service completed prior to a pattern of misconduct, some of which included violence towards others, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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 correction of the records of the individual concerned.

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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.

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) in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. An honorable discharge is a separation with honor. Issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty during the member's current enlistment or current period of service with due consideration for the member's age, length of service, grade, and general aptitude.
 - b. Paragraph 5-31 (Expeditious Discharge Program (EDP)) provides that members who have demonstrated that they cannot or will not meet acceptable standards required of enlisted personnel in the Army because of existence of one or more of the following conditions may be separated.
 - Poor attitude
 - Lack of motivation
 - Lack of self-discipline
 - Inability to adapt socially or emotionally
 - Failure to demonstrate promotion potential
 - c. Paragraph 5-31 c states that the EDP will provide for the expeditious elimination of substandard, nonproductive soldiers before board or punitive action becomes necessary. These provisions are intended to relieve unit commanders of the administrative burden normally associated with processing eliminations for cause through administrative separation boards by providing a means to separate such personnel expeditiously before they progress to the point where board or punitive action becomes necessary.

- d. Paragraph 5-31h (2) states discharge those members deemed to have no potential for useful service under conditions of full mobilization.
- 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//