

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 February 2025

DOCKET NUMBER: AR20240005988

APPLICANT REQUESTS:

- an upgrade of his characterization of service from general, under honorable condition to honorable
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Orders D-05-025376, 23 May 1984
- DA Form 3725 (Army Reserve Status and Address Verification), May 1984

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 to have a hearing to upgrade his discharge to honorable as he was never originally given any due process before being separated. At the time, his first sergeant was not promoting, and he was actively trying to kick out all black members of the unit. He found out later through a friend that remained in the unit that he received a dishonorable discharge.
3. The applicant provides:
 - a. Orders Number D-05-025376, issued by U.S. Army Reserve Personnel Center, St. Louis, MO, dated 23 May 1984, which shows he was discharged from the Ready Reserve, effective 30 June 1984, with a general discharge.
 - b. DA Form 3725 (Army Reserve Status and Address Verification) dated May 1984.

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

a. The applicant enlisted in the Army National Guard (ARNG) on 1 July 1978.

b. Letter of Instruction – Unexcused Absence letters were mailed to the applicant by certified mail, for being absent from a scheduled unit training assembly (UTA) or multiple unit training assembly (MUTA) on the following dates:

- 4 and 5 August 1979 – claimed on 10 August 1979
- 8 and 9 September 1979 – claimed on 25 September 1979
- 13, 14, and 20 October 1979 – claimed on 8 November 1979
- 3 and 4 November 1979 – returned to sender, unclaimed
- 1 December 1979 – returned to sender, unclaimed
- 7 April 1980 – claimed on 5 May 1980
- 17 – 18 May 1980 – returned to sender, unclaimed
- 7 – 8 June 1980 – returned to sender, unclaimed
- 16 – 17 August 1980 – returned to sender, unclaimed
- 13 – 14 September 1980 – returned to sender, unclaimed
- 4 October 1980 – returned to sender, unclaimed

c. On 4 September 1981, the immediate commander notified the applicant via certified mail, of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 135-178 (ARNG and Army Reserve Separation of Enlisted Personnel), chapter 6 (unsuitability) or chapter 7 (misconduct).

d. The notification of separation letter was returned to sender. The certified mail receipt shows the letter was returned due to moved, left no address.

e. On 21 September 1981, the applicant's immediate commander recommended the applicant be separated in accordance with AR 135-178, paragraph 7-46(2) b. The commander noted the applicant had been absent without leave off and on since 4 August 1979. The commander stated that the applicant was not an asset to the unit due to the fact that he made no effort to contact the unit.

f. On 29 September 1981, the separation authority approved the recommended discharge and directed the applicant be issued a general, under honorable conditions discharge. He directed that the National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management System), paragraph 7-10q, misconduct, be cited as the discharge authority.

g. The applicant was discharged on 28 January 1982. His NGB Form 22 (National Guard Bureau Report of Separation and Record of Service) shows he was discharged under the provisions of NGR 600-200, paragraph 7-10q, by reason of misconduct, in the

rank/grade of private (PV2)/E-2, and his service characterized as general, under honorable conditions. He completed 3 years, 6 months, and 28 days of net active service this period. Additionally, his NGB Form 22 shows in item 18 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded This Period), none.

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. The Board should consider the applicant's overall 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 petition, available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board noted the applicant's record reflect repeated unexcused absences from scheduled training assemblies between August 1979 and October 1980, and certified letters of instruction were mailed to the applicant, many of which were returned unclaimed.

2. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board acknowledged the applicant's concerns, there is no evidence in the record to support the claim of racial discrimination or procedural error. The Board notes, the applicant was discharged for misconduct and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Therefore, relief is denied.

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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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. National Guard Regulation 600-200 (Enlisted Personnel Management System), in effect at the time, prescribed the policies, criteria, and procedures that applied to procuring and retaining enlisted personnel for the Army National Guard (ARNG),

establishing, and maintaining personnel records, and actions involving personnel management from date of procurement to date of separation or discharge.

a. Chapter 7 (Discharge and Separation) states the separation of enlisted personnel from the ARNG was accomplished through discharge by the appropriate State authorities. Unless concurrently discharged from his enlistment or reenlistment as a Reserve of the Army, discharge is from the ARNG of the State only to become a member of the Army Reserve. In this case, the enlisted member would cease to be a member of the ARNG. Unless otherwise specified, the State Adjutant General was the final approving authority for the specific discharge action prescribed.

b. Paragraph 7-10q (Discharge from the ARNG of the State only for enlisted personnel with a remaining Reserve obligation). Unless transferred to the Inactive National Guard, an enlisted member who had a remaining Reserve obligation would be discharged from the ARNG for misconduct and transferred to the Individual Ready Reserve.

c. Paragraph 7-18, states:

(1) General Discharge (NGB Form 56A) would be awarded to each enlisted person discharged from the ARNG only, who reverts to control of the Army Reserve, and whose military record is not sufficiently meritorious to warrant an honorable discharge.

(2) General Discharge (NGB Form 56) would be awarded to each enlisted person who was concurrently discharged from the ARNG and as a Reserve of the Army and whose separation from such service was under honorable conditions, but whose military record was not sufficiently meritorious to warrant an honorable discharge. Factors to be considered included but were not limited to lack of interest or initiative, poor attendance, and unwillingness of the individual to apply himself to his assigned duties.

(3) Honorable Discharge (NGB Form 55A) would be awarded each enlisted person discharged from the ARNG only, who reverted to control of the Army Reserve and whose service and performance of duty met the standards for this certificate. This certificate would be given personnel who had received an honorable certificate from their current Reserve of the Army status.

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 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.

4. Army Regulation 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.

//NOTHING FOLLOWS//