

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 February 2025

DOCKET NUMBER: AR20240006082

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his (general) under honorable conditions discharge to honorable. As new contentions:

- his rank to be restored to staff sergeant (SSG)/E-6
- DD Form 214 (Certificate of Release or Discharge from Active Duty) item 28 (Narrative Reason for Separation): for the good of the service – in lieu of trial by court-martial be removed

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

- Reconsideration request
- AR20210011196 ROP
- Transmittal of Court-Martial charges
- Reduction orders
- Reprimand
- DA Form 4856-R (General Counseling Form)
- DA Form 2627(Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)
- DA Form 2-1 (Personnel Qualification Record – Part II)

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 AR20210011196 on 8 March 2022.

2. The applicant states when he received notification that the Board had upgraded his discharge to under honorable conditions (General). He was informed this was a "partial relief." He was very appreciative and thankful. He read and re-read the "record of proceedings". It was stated in the correspondence that he could request reconsideration of that portion of his application which was denied. He has attempted to ascertain what "partial relief" means and has had no success. He has not specifically been informed as to what part of his application was denied. He is requesting further consideration for full relief based upon the evidence herein contained:

a. He concurs with the Board's findings, (Page 3 item #7 ABCMR ROP Exhibit 1), that the relevant DD Form 458 (Charge Sheet) is not contained within his personnel record. He would suggest this is a major omission in his case. Without a DD Form 458 it cannot be substantially proven that he was ever formally charged with a crime deserving a court-martial.

b. He further postulates the fact that not only is the DD Form 458 missing from his official personnel records. The DD Form 458 is not a part of any recommendation from the chain of command which list it as an enclosure (Exhibit 2) to their respective recommendations to the Post Commander.

c. Furthermore, as the Board recites on page 3 item #9 (Exhibit 1) "the issuance of a discharge under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, required the applicant, to have requested from the Army - voluntarily, willingly, and in writing - discharge in lieu of trial by court-martial. There is no DA or DD Form contained in the official record showing that he ever made such a request in writing. Though he sought advice from the Judge Advocate General (JAG) there is no evidence he submitted a written request.

d. The absence of a written request would constitute a "violation" of AR 635-200, Chapter 10 making any ruling based here upon illegal and unsubstantiated. The responsibility of such a violation would rest with the chain of command, JAG, or Post Commander which ones he does not directly know. However, he does know that he should not be accountable for someone else's disregard and violation of Army Regulations.

e. He even further postulates the fact of evidence or the absence thereof that the Post Commander did not have the authority to demote him from the rank of E-6 to E-1, (Exhibit 3) since he was not criminally charged as evidenced by the absence of a DD Form 458. His due process according to the UCMJ was denied and violated by this extreme action by the Post Commander without the preponderance of evidence to support his decision.

f. It is further evidenced as the Board has mentioned he received a Letter of Reprimand (Exhibit 4) and general counseling (the Board identified this as adverse counseling Page 2 item #5 Exhibit 1) from his commander as recorded on DA Form 4856-R (Exhibit 5) for writing bad checks. He submits as evidence the absence of DD Form 458 (Charge Sheet) from the official record constitutes counseling alone was the only motivator he needed to implement corrective action indicating that he paid all the checks as he stated in his original application and recorded on page 2 item C (Exhibit 1).

g. The Record of Proceedings Under Article 15, UCMJ (Exhibit 6) dated 6 December 1985 was for missing morning formation (punishment was suspended), bad checks were not a part of this action nor mentioned within. Again, this gives evidence the above-mentioned counseling in reference to writing bad checks was the only re-enforcement required to inspire corrective action to resolve this matter.

h. The chain of command also listed as enclosures DA Form 2-1. This form is missing from their letter of recommendation as well. After careful review he included a copy (Exhibit 7) to provide evidence showing there is absolutely no negative entry in his military record as provided on DA Form 2-1.

i. He does not deny the fact that he went to JAG seeking advice on release from the Army in lieu of personal family matters. However, as previously stated above there is no evidence, he acted upon any advice he may have received from JAG nor is there evidence he requested separation in accordance with AR 635-200, Chapter 10. Due to the absence of a formal, written request from him and the absence of DD Form 458 (Charge Sheet) formally charging him with a criminal offense; the only mention of "court-martial" is in the letters of recommendation from the chain of command (i.e. Company, Battalion, and Brigade commanders) to the Post Commander which contain no accompanying legal foundation to their requests.

j. The Board stated in its Record of Proceedings page 3 under Board Discussion (Exhibit 1) although the facts that led to his discharge are unknown this statement alone gives evidence to the fact that it must be concluded any decision must be made from the facts that are known and available as presented herein this respectful request for further consideration on behalf of the applicant. Though he wrote some bad checks this discrepancy was corrected after receiving adverse counseling at the company level, no further action required. No preponderance of evidence indicating he was going to be court-martialed he did serve honorably and meritoriously.

k. From the evidence herein presented on his behalf to the Board for further consideration he quotes · from the Board's ROP the following from page 5 item 3c (Exhibit 1) "... although an honorable or general discharge was authorized ..." he respectfully requests mercy from the Board based on the preponderance of exculpatory evidence presented herein that his discharge be upgraded to indicate honorable. He also requests since there was no valid legal foundation, i.e. no formal criminal charges based upon the evidence of no DD Form 458 to authorize the Post Commander to demote him in rank to E-1 private that his rank reflect E-6 staff sergeant (item 4a & b DD Form 214). Since there is no evidence that he formally requested in writing pursuant to AR 635-200 that for the good of the service – in lieu of trial by court-martial be removed from his DD Form 214 item #28.

3. The applicant enlisted in the Regular Army on 3 July 1979. The applicant reenlisted in the Regular Army for 6 years on 3 February 1983.

4. Orders 151-214 issued on 25 June 1984; shows he was promoted to staff sergeant effective 1 July 1984 with a date of rank of 22 June 1984.

5. The applicant received a Letter of Reprimand from his company commander on 7 August 1985 for repeated inability to control his personal finances. The reprimand stated in part:

a. On 6 August 1985, his command was informed by officials of the Liberty National Bank that he have failed for the second time to make a payment on a recent car loan. In addition, his supervisors have indicated that on at least one occasion he had written a bad check.

b. He needs to understand the seriousness of his actions. An Non-Commissioned Officer who cannot maintain his personal finances has no credibility in the eyes of his subordinates. Therefore, he becomes a totally ineffective leader.

c. He must make a decision whether or not he wants to remain in the Army. If he needs help or advice on maintaining his finances, his commander will be glad to help. If he corrects this problem, he will consider the matter closed. If, however, he receives one more complaint about his finances, he will initiate procedures to place a Bar on his reenlistment.

d. His commander proposed to file the reprimand indefinitely in his Military Personnel Records Jacket.

e. The applicant provided the acknowledgement of his letter of reprimand stating he read and understood the unfavorable information presented against him and submits a statement or documents on his behalf.

f. His commander wrote: as of 20 August 1985, the applicant's statement had not been received. Witnessed by the first sergeant.

6. On 18 November 1985, the applicant received adverse counseling on for writing \$625.00 worth of bad checks and missing morning formation at 0530 hours 18 November 1985. It was reported that during the counseling session the applicant falsely stated to his commanding officer that it was his wife that had written the bad checks. Attached to the counseling form is a letter from the Fort Knox Federal Credit Union listing 11 dishonored checks and copies of those checks, all bearing his signature not his wife's.

7. He received nonjudicial punishment (NJP) on 6 December 1985, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), for on or about 0530, 18 November 1985, without authority failed to go at the time prescribed to his appointed place of duty (morning formation). He appealed his punishment on 11 December 1985. On 17 December 1985, the next higher command denied his appeal.

8. His record is void of a DD Form 458 (Charge Sheet). This form would have indicated the court martial charge(s) and specification(s) which were preferred. The applicant's record is void of the complete facts and circumstances that led to his separation. However, his service record contains:

a. Transmittal of Court-Martial Charges 21 January 1986, in which his immediate commander recommended the applicant be tried by a special court-martial empowered to adjudge a bad conduct discharge.

b. His intermediate commanders forwarded court-martial charges pertaining to the applicant and recommended trial by special court-martial empowered to adjudge a bad conduct discharge.

c. DD Form 214 which shows he was discharged on 17 March 1986, under the provisions of AR 635-200, chapter 10. He completed 6 years, 8 months, and 15 days net active service this period. His DD Form 214 further shows:

- Item 4a (Grade, Rate or Rank): PV1
- Item 4b (Pay Grade): E-1
- Item 24 (Character of Service): Under other than honorable conditions
- Item 26 (Separation Code): KFS
- Item 28 (Narrative Reason for Separation): For the good of the service - in lieu of court-martial

9. The applicant provided orders 51-105, issued by Headquarters, US Army Armor Center, Fort Knox, KY, on 17 March 1986, which reduced his rank from staff sergeant (E-6) to private (E-1) under the authority of AR 635-200, chapter 10 and AR 600-200, paragraph 6-11 effective 7 March 1986.

10. On 8 March 2022, in ABCMR Docket Number AR20210011196, the Board considered his application and rendered a decision on his application to correct his military records. Partial relief to his request was granted (upgrade to (general) under honorable conditions vice upgrade to honorable). As such, the Board determined that although his service did not rise to the level of an honorable discharge, the character of service the applicant received upon separation should be corrected as a matter of clemency. The Board found the applicant's post-service achievements sufficient to

support clemency. Based on a preponderance of evidence, the majority determined the applicant's character of service should be changed to (general) under honorable conditions.

11. His initial DD Form 214 was voided. He was issued a new DD Form 214 to reflect his character of service as (general) under honorable conditions.

12. By regulation, AR 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of the version in effect at the time provided that a member who committed an offense or offenses for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service at any time after court-martial charges were preferred, commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service.

13. Grade: By regulation (AR 635-5), items 4a and 4b of the DD Form 214 list the rank/grade held by the Soldier at the time of separation.

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 petition and available military records, the Board determined that the applicant has not provided new, compelling evidence to warrant reconsideration of the previous decision to upgrade his discharge from general under honorable conditions to honorable. The Board reaffirmed its prior finding that, while clemency was appropriate to upgrade the discharge from under other than honorable conditions to general, the applicant's overall service did not meet the standards required for an honorable discharge.

2. The Board acknowledged the request to restore the applicant's rank to Staff Sergeant (SSG)/E-6, the Board reviewed Orders 151-214, dated 25 June 1984, which confirmed his promotion effective 1 July 1984. However, the Board also noted that the applicant was reduced in rank to Private (E-1) under the authority of AR 635-200,

Chapter 10, and AR 600-200, paragraph 6-11, as part of his separation proceedings. Given the misconduct and administrative reduction in rank, the Board found no basis to restore his rank and denied relief on this issue. Furthermore, the Board considered, the applicant’s request to remove the narrative reason for separation, For the good of the service – in lieu of trial by court-martial” from his DD Form 214. However, the Board found the narrative reason consistent with the provisions of AR 635-200, Chapter 10, and reflects the circumstances surrounding his discharge. Although the applicant’s discharge was previously upgraded to general under honorable conditions, the underlying basis for separation remains valid. Therefore, the Board denied relief.

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:

The 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 AR20210011196 on 8 March 2022..

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. Army Regulation (AR) 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of that regulation provided, in pertinent part, that a member who had committed an offense or offenses for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an undesirable discharge certificate.

d. Paragraph 1-14 states: Reduction in grade. When a member is to be discharged under other than honorable conditions, the convening authority will direct an immediate reduction to the lowest enlisted grade per AR 600-200, chapter 6, section IV.

2. AR 600-200 (Enlisted Personnel Management System) in effect at the time prescribes policies and procedures for career management of Army enlisted personnel including promotions and reductions in grade. Paragraph 6-11 (Approved for discharge from service under other than honorable conditions) states when the general court-martial convening authority determines that a soldier is to be discharged from the service under other than honorable conditions, he, or she: will be reduced to the lowest-enlisted grade. Board action is not required for this. reduction. The commander having general court-martial jurisdiction will, when directing a discharge under other: than honorable conditions or when directed by higher authority, direct the soldier to be reduced to private, E-1.

3. AR 635-5 (Personnel Separations – Separation Documents), prescribes the separation documents that will be furnished each individual who is separated from the

Army. Items 4a and 4b of the DD Form 214 list the rank/grade held by the Soldier at the time of separation.

4. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies:

a. SPD code of "KFS" as the appropriate code for voluntary discharge to Soldiers who are discharged under the provisions of Army Regulation 635-200, chapter 10 by reason of for the good of the service – in lieu of court-martial.

b. SPD code of "JFF" as the appropriate code for involuntary discharge to Soldiers who are discharged under the provisions of AR 635-200, chapter 5 by reason of directed by service secretary. The Secretary of the Army will determine RE code for separations under Secretarial authority. SPD code may be used when HQDA message or other directive authorizes voluntary separation in an individual case or category of cases.

5. 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//