

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2025

DOCKET NUMBER: AR20240006130

APPLICANT REQUESTS: an upgrade of his general characterization of service.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
Two DD Forms 149 (Application for Correction of Military Record)

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 told his discharge would be upgraded after 6 months. A Veterans Service Officer told him that he could get his discharge upgraded, but he has not tried until now. He has been dealing with tinnitus since shooting the loud guns, grenades, and live fire training with the 90-millimeter gun. He has lost all his paperwork, badges, and a photograph of himself.
3. On 16 May 1975, the applicant enlisted in the Regular Army for 3 years and he held military occupational specialty (MOS) 11B (Infantryman). On 29 September 1975, he was assigned to Fort Lewis Washington.
4. Six Commander's Letters of Counseling show he was counseled, and he acknowledged he fully understood that if he continued to behave or perform duty in a manner unacceptable to the US Army action would be initiated to separate him from service under less than honorable conditions on:
  - a. 19 February 1976, for being absent at 0615 hours on 9 February 1976 and for failing to call his chain of command to make known his whereabouts.
  - b. 1 April 1976, for being absent from his appointed place of duty from 30 - 31 March 1976.
  - c. 14 May 1976, for excessive absences from the "O.R.U."

- d. 18 May 1976, for having no post tags on 12 and 19 April 1976.
  - e. 6 July 1976, for being absent from his appointed place of duty on 1 and 2 July 1976, and for failure to find transportation to return to the company area.
  - f. 16 August 1976, for being absent from his appointed place of duty on 4 and 5 August 1976.
5. He accepted nonjudicial punishments (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for the following reasons on:
- a. 10 February 1976, for being absent from his appointed place of duty from 9 to 10 February 1976. His punishment consisted of 3 days of restriction, 3 days of extra duty, and a forfeiture of 2 days' pay (\$26).
  - b. 1 April 1976, for being absent from his appointed place of duty from 30 to 31 March 1976. His punishment consisted of a forfeiture of 7 days' pay, reduction from pay grade E-2 to E-1, and confinement at the Correctional Confinement Facility for 7 days.
6. On 23 August 1976, the applicant's immediate commander notified the applicant that he was initiating action to discharge him from the Army under the provisions of Army Regulation AR 635-200, paragraph 5-37 (Expeditionary Discharge Program (EDP)) with a general discharge. He was advised of his rights. The specific reason cited for the proposed discharge action was he had been constantly counselled for shirking duties, and he had received three NJPs for being late and absent from his appointed place of duty. Even after several counselling sessions and receiving an NJP it seemed to have no effect on his military performance, therefore, the commander strongly believed that his continued presence in the unit would only lead to further counselling, NJP, and create an attitude and disciplinary problem. The commander strongly believed the applicant should be eliminated from the U.S. Army as soon as possible. He was advised of his rights.
7. The applicant acknowledged notification of his proposed discharge action and voluntarily consented to discharge. He acknowledged he understood if he received a general discharge, he could expect to encounter substantial prejudice in civilian life. There is no evidence that he elected to submit a statement in his own behalf.
8. The applicant's immediate commander recommended separation action against him under the provisions of AR 635-200, paragraph 5-37, EDP, with a general discharge.

9. On 2 September 1976, he underwent a medical examination and it was determined he was qualified for separation with PULHES of "1 1 1 1 1 1." The acronym "PUHLES" describes the following six physical factors used in the profiling system to classify medical readiness: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric). Physical profile ratings are permanent (P) or temporary (T). A service members level of functioning under each factor is represented by the following numerical designations: 1 indicates a high-level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited.

10. The separation authority approved the applicant's discharge under the provisions paragraph 5-37, AR 635-200, EDP, with a General Discharge Certificate.

11. On 15 September 1976, the applicant was discharged accordingly. His DD Form 214 shows he completed 1 year and 4 months of his 3-year enlistment contract. His DD Form 214 also reflects in:

- Authority and Reason – "Paragraph 5-37, AR 635-200 SPD JGH"
- Character of Service – "Under Honorable Conditions"
- Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized – Expert Marksmanship Qualification Badge
- Remarks – Failure to Maintain Acceptable Standards for Retention (EDP)

#### 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 honorable service completed prior to a pattern of misconduct leading to the applicant's separation, as well as the lack of mitigation for such misconduct, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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 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.

//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 635-200 set forth the basic authority for the separation of enlisted personnel.

a. The pertinent paragraph in chapter 5 provided that members who had completed at least 6 months but less than 36 months of continuous active service on their first enlistment and who had demonstrated that they could not or would not meet acceptable standards required of enlisted personnel because of poor attitude, lack of motivation, lack of self-discipline, inability to adapt socially or emotionally, or failure to demonstrate promotion potential may be discharged under the EDP.

b. It provided for the expeditious elimination of substandard, nonproductive Soldiers before board or punitive action became necessary. No member would be discharged under this program unless they voluntarily consented to the proposed discharge. Issuance of an Honorable Discharge Certificate was predicated upon proper military behavior and proficient performance of duty during the member's current enlistment with due consideration for the member's age, length of service, grade, and general aptitude.

c. This regulation also states 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.

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//