

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2025

DOCKET NUMBER: AR20240006138

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions discharge (General)
- a personal appearance before the Board via video/telephone

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 149 (Application for Correction of Military Record)
- Applicant Personal Statement, 10 April 2024
- DD Form 214 (Report of Separation from Active Duty), 1 May 1979

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 believes an unfair determination was made. He was never disciplined, never had problems with his immediate superiors or anyone else, and he never requested to be discharged. When he enlisted, he intended to make the U.S. Army a career. However, his mother became seriously ill, and she started calling a lot while he was in Germany. He was not expecting his mother to continuously call expressing an emergency. She passed away shortly after he returned home to the U.S.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 25 January 1978, for a period of four years.
 - b. A note from the applicant's section noncommissioned officer in charge (NCOIC), dated 4 August 1978, which shows the applicant was instructed to finish cleaning his weapon and report for an M60 range card class. The applicant failed to attend and

instead of attending the class he went across post to the post exchange (PX). After talking to the applicant, he said that he finished cleaning his weapon. He went to the area, but no one was there so he went to the PX.

c. On 5 April 1979, the applicant's immediate commander notified him of his intent to initiate separation actions against him under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-31, Expeditious Discharge Program (EDP), and explained his rights. The commander listed the following reasons for the proposed separation: based on his poor attitude and inability to accept instructions or directions. As indicated by his constant disrespect towards NCOs and Section Chief. His attitude was consistently poor. His constant refusal to comply with orders given to him indicate a lack of expected and required discipline. With this sort of attitude and its resulting friction with his chain of command, his job performance suffered, and his reliability; he could not be depended upon to do as he was required and instructed. His chain of command attempted to correct these problems within his duty section, but it had been to no avail. As his problems and attitude were not confined to just a few individuals, but rather to everyone assigned to supervise him. He could only surmise that further service in the U.S. Army would be disadvantageous for both the applicant and the Army.

d. On 5 April 1979, the applicant acknowledged receipt of his commander's notification of his proposed discharge from the U.S. Army under the provisions of AR 635-200, paragraph 5-31. The applicant consulted with counsel and was advised of the basis of the contemplated separation and voluntarily consented to this discharge. He elected not to submit statements in his own behalf. He understood that he may expect to encounter substantial prejudice in civilian life if a general, under honorable conditions discharge was issued to him.

e. On the same date, the applicant's commander formally recommended approval of the separation under the provisions of AR 635-200, paragraph 5-31, with a general discharge.

f. On 18 April 1979, the separation authority approved the recommended discharge and directed the applicant be issued a DD Form 257A (General Discharge Certificate).

g. A Statement of Medical Condition, dated 29 April 1979, shows the applicant underwent a separation medical examination more than three working days prior to his departure from place of separation. To the best of his knowledge, since his last separation examination, there had been no change in his medical condition.

h. On 1 May 1979, the applicant was notified of the reason and narrative description of the regulatory/statutory authority for his separation from active duty. The letter states he was separated for failure to maintain acceptable standards for retention (EDP). His

reenlistment code (RE) was RE-3, not eligible for immediate reenlistment unless waiver consideration is permissible and granted.

i. The applicant was discharged on 1 May 1979. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 5-31, for failure to maintain acceptable standards for retention (EDP). His service was characterized as under honorable conditions, general. He completed 1 year, 3 months, 7 days of active service this period. His DD Form 214 also shows in:

- Item 9c (Authority and Reason): shows his separation code as JGH.
- Item 10 (Reenlistment Code): RE-3
- Item 26 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Marksman Qualification Badge (M-16)

4. There is no indication the applicant applied to the ADRB for review of his discharge processing within that board's 15-year statute of limitations.

5. The Board should consider the applicant's statements and 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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated under the Expeditious Discharge Program with the commander citing poor attitude and inability to accept instructions or directions. The Board found no error or injustice in the separation proceedings under the regulation and subsequent characterization of service assigned at separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. 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
■	■	■	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.

6/6/2025

X _____

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 (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 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 a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 5-31 provides for separating enlisted members under the expeditious discharge program (EDP). This program 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 when they have failed to respond to counseling (DA Form 4856, General Counseling Form). The criteria in section VIII, chapter 1, will govern whether the member will be released from active duty with transfer to the IRR, or be discharged. A discharge general, under honorable conditions is normally appropriate for a Soldier discharged under this chapter.

- Poor attitude
- Lack of motivation
- Lack of self-discipline
- Inability to adapt socially or emotionally
- Failure to demonstrate promotion potential

d. No member will be separated under this program unless the Army member voluntarily consents to the proposed separation. The Army member's acceptance of separation may not be withdrawn after the date the separation authority approves the separation.

3. Army Regulation 635-5-1 (Separation Program Designators) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation code to be entered on the DD Form 214. It identifies the separation code "JGH" as the appropriate code to assign to enlisted personnel administratively discharged under the provisions of Army Regulation 635-200, paragraph 5-31, based on the Expedient Discharge Program for failure to maintain acceptable standards for retention.

4. 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.

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, 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.

5. 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.

a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. 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//