

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240006193

APPLICANT REQUESTS: upgrade of his under conditions other than honorable discharge with a change in separation code.

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 214 (Certificate of Release or Discharge from Active Duty)
- National Personnel Records Center letter

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 entered the military at the age of 16. When he got to Germany, he was in a combat support unit. There was a guy that started acting like his buddy. It progressed from joking around and snapping his towel at him in the shower to sexual abuse. He sexually abused and harassed him for 14 months. He told his first sergeant, and he told the applicant "To pick better friends". He did nothing to protect or help the applicant. He began to spend as much time off base as possible and would hide from this guy when on base. He started to abuse substances to dull the pain and further escape. This guy was one of the super guys and they would not listen. He began to sleep off base under a bridge. When he got discharged for misconduct, he was happy because he knew the abuse was finally going to stop. He now recognizes that it ruined his life. This is the first time he is telling anyone and has never received any help. He still has nightmares and if his discharge status could be upgraded, he could access Veterans Affairs mental health and military sexual trauma services that he so badly needs. He does not believe he will get the help he needs with a community provider.
3. The applicant enlisted in the Regular Army on 16 July 1980.

4. His first duty station was Germany from 16 November 1980 – 11 May 1982.
5. DD Form 458 (Charge Sheet) shows court martial charges were preferred on 2 March 1982, for:
 - On or about 24 August 1981, violate a lawful general regulation by having in his possession in a concealed manner, a locking blade knife with a blade in excess of three inches
 - On or about 21 July 1981, violate a lawful general regulation by wrongfully selling lysergic acid diethylamide
 - On or about 26 July 1981, wrongfully have in his possession 9.21 grams more or less of marijuana in the hashish form
6. On 3 March 1982, after consultation with counsel he voluntarily requested discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He understood that he may request discharge for the good of the service because of the charges preferred against him under the Uniform Code of Military Justice, which authorizes the imposition of a bad conduct discharge or dishonorable discharge. He also understood:
 - He may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Discharge Certificate
 - He may be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered by the Veterans Administration
 - He may be deprived of his rights and benefits as a veteran under both Federal and State law
 - He may expect to encounter substantial prejudice in civilian life because of an under other than honorable discharge
7. His chain of command recommended approval of separation under the provisions of AR 635-200, chapter 10, and that he be issued an Other than Honorable Discharge Certificate.
8. On 1 April 1982, the separation authority approved discharge under the provisions of chapter 10, AR 635-200. He directed an Other Than Honorable Conditions Discharge Certificate be issued, and he be reduced to the lowest enlisted grade.
9. He was discharged on 14 April 1982, under conditions other than honorable under the provisions of AR 635-200, chapter 10. His DD Form 214 shows he completed 1 year, 8 months, and 29 days net active service this period. It also shows:
 - Item 26 (Separation Code): JFS
 - Item 27 (Reenlistment Code): RE-3

- Item 28 (Narrative Reason for Separation): Admin Discharge Conduct Triable by Court Martial

10. The ADRB, after careful consideration of his military records and all other available evidence, determined that he was properly and equitably discharged. Accordingly, his request for a change in the type and nature of his discharge was denied.

11. The applicant provides NPRC letter stating the applicants service dates.

12. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

13. 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, 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 charged with offenses punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's age and type of offenses and concluded that the characterization of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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
Signed by:

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 (AR) 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

a. Paragraph 3-7a (1) states an honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

3. AR 635-5-1 (Separation Program Designator Codes) prescribes the specific authorities (regulatory, statutory, or other directives), the reasons for the separation of members from active military service, and the separation program designators to be used for these stated reasons:

- Separation Code JFS applies to enlisted Soldiers who were separated for the good of the service
- Separation Code JFF applies to enlisted involuntary discharge directed by service secretary

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. 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//