

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 February 2025

DOCKET NUMBER: AR20240006452

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under other than honorable conditions discharge. Also, a personal appearance before the Board.

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

DD Form 149 (Application for Correction of Military Record)

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 AR20210016059 on 29 July 2022.
2. The applicant states he request upgrade from general to honorable.
3. The applicant enlisted in the Regular Army on 29 November 1977, for 4 years. He held military occupational specialty 62B (Construction Equipment Repairer). He extended his enlistment by 9 months on 26 October 1979.
4. The applicant accepted non-judicial punishment, under the provisions of article 15 of the Uniform Code of Military Justice (UCMJ) on the following dates:
  - 9 March 1979, for on or about 0740 hours, 2 March 1979, without authority, absent himself from his place of duty & on or about 0645 hours, 7 March 1979, without authority failed to go at the time prescribed to his appointed place of duty; he was reduced to private/E-2
  - 27 February 1980, for on or about 7 February 1980, being absent from his place of duty
5. On 23 May 1980, court-martial charges were preferred against the applicant for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with:

- failure to go at the time prescribed to his appointed place of duty on or about 23 April 1980
- two specifications of willfully disobeying a lawful order or command, on or about 23 April 1980
- being disrespectful in language towards a senior non-commissioned officer, on or about 23 April 1980
- two specifications of assault upon another Soldier, on or about 22 March 1980
- on or about 23 April 1980, drunk and disorderly in quarters during duty hours

6. He consulted with counsel and voluntarily requested discharge, for the good of the service, in lieu of trial by court-martial, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. He acknowledged that he was guilty of the charges against him or of a lesser included offense(s) therein contained which also authorize(s) the imposition of a bad conduct or dishonorable discharge. He understood:

- He might encounter substantial prejudice in civilian life and might be ineligible for many or all benefits administered by the Veterans Administration (VA), and that he may be deprived of his rights and benefits as a veteran under both Federal and State Law if an undesirable discharge were issued
- He may expect to encounter substantial prejudice in civilian life because of an under other than honorable discharge
- He elected not to submit a statement in his own behalf

7. His chain of command recommended approval under the provisions of AR 635-200, chapter 10.

8. On 3 July 1980, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, Chapter 10. He directed the applicant be reduced to the lowest enlisted grade and issued a discharge certificate under other than honorable conditions.

9. Accordingly, he was discharged on 28 July 1980, under other than honorable conditions. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years and 8 months net active service this period. It also shows:

- Item 25 (Separation Authority): chapter 10, AR 635-200
- Item 26 (Separation Code): JFS
- Item 27 (Reenlistment Code): RE-3
- Item 28 (Narrative Reason for Separation): Administrative Discharge Conduct Triable by Court-Martial

10. On 7 February 1983, 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. On 29 July 2022, the ABCMR considered his previous case (AR20210016059) and determined the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case were insufficient as a basis for correction of the records of the individual concerned. His request for upgrade was denied.

12. By regulation, AR 15-185 (ABCMR) 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.

13. 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.

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:

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 pattern of misconduct leading to the applicant's separation and the lack of any mitigation evidence and/or post-service character evidence showing the applicant warrants consideration for clemency, 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.

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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. Army Regulation (AR) 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.

2. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel, it states:

a. Chapter 10 is applicable to members who had committed an offense or offenses for which the authorized punishment included a bad conduct or dishonorable discharge could submit a request for discharge for the good of the service. The request could be submitted at any time after the charges had been preferred. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service has generally met standards of acceptable conduct and performance of duty for Army personnel.

c. 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.

3. 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//