

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2025

DOCKET NUMBER: AR20240007102

APPLICANT REQUESTS: an upgrade of his general under honorable conditions discharge to honorable.

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)
- Beneficiary Identification Records Locator Subsystem (BIRLS) database printout
- VA Form 21-526EZ (Application for Disability and Related Compensation Benefits)
- VA Form 20-0995 (Decision Review Request: Supplemental Claim)

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, in effect, he would like his character of service changed to honorable.

3. The applicant provides:

- BIRLS data printout, which is a tool the Center of Verification and Evaluation (CVE) uses to verify an applicant is an eligible Veteran
- VA Form 21-526EZ, dated 18 March 2024 (6 pages)
- VA Form 20-0995, dated 18 March 2024 (2 pages)

4. A review of the applicant's service record shows:

- a. He enlisted in the Regular Army on 26 April 1983.

b. The applicant accepted nonjudicial punishment (NJP) as follows:

(1) 18 January 1985, Company Grade, for willfully disobeying a lawful order given by a superior noncommissioned officer on 8 January 1985.

(2) On 12 June 1985, Field Grade, for failing to go at the time prescribed to his appointed place of duty on or about 16 October 1988; he was disrespecting a superior; commissioned officer on 3 June 1985. His punishment consisted of a reduction to E-1.

c. DA Form 3822-R (Report of Mental Status Evaluation) reflects a mental status evaluation was conducted on 5 August 1985. The applicant was found to have the mental capacity to understand and participate in the proceedings, was mentally responsible, and met the retention requirements for Chapter 3, AR 40-501.

d. On 15 August 1985, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), paragraph 13-2, for unsatisfactory performance. Specifically, the applicant had not demonstrated the potential to satisfactorily participate in future training of military duties.

e. The applicant acknowledged receipt of the commander's intent to separate him on 15 August 1985. He consulted with legal counsel who advised him of the basis for the contemplated separation action for unsatisfactory performance, the type of discharge he could receive and its effect on further enlistment or reenlistment, the possible effects of this discharge, and of the procedures/rights available to him. He elected not to submit a statement in his own behalf. He acknowledged he:

- understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him
- understood he could be ineligible for many or all benefits as a veteran under Federal and State laws as a result of the issuance of a discharge under other than honorable conditions
- understood if he received a discharge characterization of less than honorable, he could make an application to the Army Discharge Review Board (ADRB) or the ABCMR for an upgrade, but he understood that an act of consideration by either board did not imply his discharge would be upgraded

f. On 21 August 1985, the separation authority approved the applicant's discharge under the provisions of AR 635-200, paragraph 13-2, for unsatisfactory performance, and directed the applicant be issued an General Discharge Certificate.

g. His DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects he was discharged on 29 August 1985, under the provisions of AR 635-200, chapter 13,

unsatisfactory performance, with the character of service of general under honorable conditions. He completed 2 years, 4 months, and 4 days of net active service this period. Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons awarded or authorized) reflects:

- Army Service Ribbon
- Expert Badge, with M-16 Rifle Bar
- Sharpshooter Badge, Hand Grenade Bar

5. AR 635-200, in effect at the time, states action will be taken to separate a member due to unsatisfactory performance when in the commander's judgment, the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future.

6. There is no evidence that the applicant applied to the Army Discharge Review Board for review of his discharge within the board's 15 year statute of limitations.

7. 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 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.

2. The evidence of record shows the applicant was discharged under the provisions of Army Regulation (AR) 635-200, paragraph 13-2, for unsatisfactory performance. The separation was initiated following a pattern of misconduct and failure to meet military standards, including two instances of nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ). These offenses reflect a clear and sustained failure to adhere to Army standards of conduct and discipline. The applicant's commander determined that he lacked the potential to satisfactorily perform future military duties, and the separation authority approved discharge with a general characterization of service. There is no evidence of administrative error or injustice in

the applicant's discharge proceedings. The characterization of service was appropriate given the nature and frequency of the misconduct. The applicant's DD Form 214 accurately reflects his discharge under AR 635-200, chapter 13, for unsatisfactory performance, with a character of service of general under honorable conditions.

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

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), sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides 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.

b. Paragraph 3-7b provides that 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. Chapter 13 of that regulation provides, in pertinent part, if it is clearly established that the Soldier will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier. Further stating it is likely that the Soldier will be a disruptive influence in present or future duty assignments and his ability to perform duties effectively in the future, including potential for advancement or leadership, is unlikely.

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. 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. 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//