

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2025

DOCKET NUMBER: AR20240007221

APPLICANT REQUESTS:

- reconsideration of his previous requests for an upgrade of his under other than honorable conditions discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- VA Form 21-4138 (Statement in Support of Claim)
- DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the United States)
- DA Form 2-1 (Personnel Qualification Record – Part II)
- DA Form 44 (CID Report of Investigation)
- DA Form 4833 (Commanders Report of Disciplinary or Administrative Action)
- Request for Records, U.S. Army Criminal Investigation Command (USACIC)
- Five Character Reference Letters

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 AR20170002107 on 21 May 2019.

2. The applicant states he is requesting an upgrade of his under other than honorable conditions discharge.

a. He was stationed at Fort Bliss, TX, at the age of 20 years old. He was accused of larceny/break in. He is not sure of and does not remember the event; however, he knows he was not in his right frame of mind and was young and most likely did some stupid things. During this time, he was under the influence of medical narcotics and was injured multiple times during his time in service. He regrets how he acted as that was not his normal behavior.

b. He requested a discharge without understanding the ramifications and how it would affect his life. He regrets leaving the service and has been trying to get Veteran benefits or healthcare. While he was going through old documents to apply for benefits, he found a DA Form 4833 which shows he was found not guilty of housebreaking and larceny and as a result, is requesting an upgrade of his discharge.

3. The applicant provides:

a. The below listed documents to be referenced in his service record:

- DD Form 4
- DA Form 2-1
- DA Form 4833

b. A DA form 44 dated 3 March 1982, shows the applicant was under investigation for housebreaking/ larceny which took place between on or about 3-6 February 1982. He was being charged with entering another service member's room and stealing a turntable valued at \$350.00, a power amplifier valued at \$339.00, a stereo tuner valued at \$100.00 a power amplifier valued at 399.00, an equalizer valued at \$200.00, a cassette deck valued at \$250.00, and a an eclipse crossover valued at \$149.00.

c. A letter dated 18 March 1986 from USACIC shows records were provided to the Military Review Board Agency regarding Report of Investigation (ROI) #82-CID014-12754-7C2.

d. The applicant provides five-character statements from former coworkers and friends in which he has known for 3-10 years. The applicant is described as being honest, trustworthy, and willing to go above and beyond what is expected of him. He worked as the campus security officer, the student felt safe and comfortable with approaching him with different concerns. He has great work ethic, outgoing personality and is a hard worker. He has been an upstanding friend with outstanding qualities both personally and professionally. He has always been respectful to his supervisors and coworkers. His integrity, work ethic, and compassionate nature make him an outstanding individual deserving of the highest regard.

- Ms. RV, undated
- Ms. LEB, 11 January 2024
- SSG (Ret) RLF, undated
- Mr. GAM, 6 February 2024
- Ms. CAM, 6 February 2024

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

- a. He enlisted in the Regular Army on 28 September 1979.
- b. His DA Form 2-1 shows he served in the Republic of Korea from 8 May 1980 to 21 April 1981.
- c. Two DA Form's 3881 (Rights Warning Procedure/Waiver Certificate) dated 13 February 1982 show that the Criminal Investigation Division (CID) wanted to question the applicant about the offenses of larceny and housebreaking.
- d. A CID Report of Investigation #82-CID014-12754-7C2A/7G1B1 shows on 6 February 1982 a report was filed indicating between 3-6 February 1982 the applicant using unknown means entered Specialist B_K_ room and stole the following items:
 - Technics SL-10 turntable valued at \$350.00
 - SAE 22000 power amplifier valued at \$339.00
 - Pioneer stereo tuner valued at \$100.00
 - SEA power amp valued at 399.00
 - Spectro Acoustics equalizer valued at \$200.00
 - Sansui D90 cassette deck valued at \$250.00
 - BSS Eclipse Crossover valued at \$149.00
- e. The available service record is void of the DD Form 458 (Charge Sheet).
- f. On 30 June 1982, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:
 - maximum punishment
 - he was guilty of the charges against him or of a lesser included offense
 - he does not desire further rehabilitation or further military service
 - if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
 - he would be deprived of many or all Army benefits, 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
 - he elected not to submit a statement on his own behalf
- h. On 7 July 1982, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for the good of the

service. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

i. On 29 July 1982, the applicant was discharged from active duty. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, Chapter 10 with an under other than honorable conditions characterization of service. He completed 2 years, 10 months, and 2 days of active service with no lost time. It also shows he was awarded or authorized:

- Marksman Marksmanship Qualification Badge with Rifle Bar
- Expert Marksmanship Qualification Badge with Hand Grenade Bar
- Army Service Ribbon
- Overseas Service Ribbon

j. DA Form 4833 (Commander's Report of Disciplinary or Administrative Action) dated 11 August 1982, shows the applicant was found not guilty of the judicial charges of housebreaking and larceny for the 3-6 February 1982 offense.

5. On 28 April 1988, the applicant was notified the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. On 21 May 2019, the ABCMR rendered a decision in Docket Number AR20170002107. The Board found the applicant did not provide character witness statement nor evidence of post-service achievements for the Board to consider. Based upon the record, the Board agreed the applicant's discharge characterization was warranted as a result of the misconduct. His request was denied.

7. By regulation, (AR 15-185) an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

8. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An under other than honorable conditions discharge will normally be furnished an individual who is discharged for the good of the service.

9. In reaching its determination, the Board can consider the applicants 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, the evidence found within the military record, and published Department of Defense guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.
2. The Board carefully considered the applicant's contentions, his record of service, the frequency and nature of his misconduct, the referred charges, the CID report, his voluntary request for separation the reason for his separation and his discharge characterization. The Board considered the DA Form 4833 (Commander's Report of Disciplinary or Administrative Action) dated after his separation without a court martial and the character letters he provided in support of a clemency consideration. The Board found that the post-service evidence provided by the applicant was not sufficient to overcome the serious nature of the misconduct as a mater of clemency. Based on a preponderance of evidence, the Board determined that the applicant's character of service at separation was not in error or unjust.
3. 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.

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. 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. 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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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. Chapter 10 provided that a member who had 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 in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

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//