

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 January 2025

DOCKET NUMBER: AR20240007770

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

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

- Two DD Forms 149 (Application for Correction of Military Record)
- Two DD Forms 214 (Armed Forces of the United States Report of Transfer or Discharge)
- Department of Veterans Affairs (VA) 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 was sent to Germany to train on new equipment and while there was having language issues. His inability to comprehend English caused issues with other Soldiers. One evening after taking a shower, he returned to his bunk and found another Soldier drunk in his bed and a fight ensued. A knife was pulled by the other Soldier and the applicant disarmed him and the fight was broken up. The applicant was sent back to Fort Jackson, SC and was not informed what a Chapter 10 of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel).
  - a. He has always been an honorable man and has never lacked law and order. He is a hard-working, responsible, respectful citizen, a good son, a good father; he pays his taxes, and is a Christian man. He deserves his discharge to be changed.
  - b. His discharge is unfair since he did not commit any crime or felony. He has not done anything that would make him deserving of the discharge he received. He has been waiting for 46 years for justice and to be corrected to an honorable one. He was an excellent Soldier.

3. The applicant provides a VA letter, dated 28 June 2024, which shows his service from 6 August 1973 to 2 October 1973 as honorable and his service was from 19 July 1976 to 11 January 1978 as honorable.

4. The applicant served honorably in the Regular Army from 6 August 1973 to 2 October 1973. His DD Form 214 for this period shows he completed 1 month and 27 days of active service.

5. He re-enlisted in the Regular Army on 19 July 1976.

6. On 25 November 1977, charges were preferred on the applicant. The relevant DD Form 458 (Charge Sheet) shows:

- Charge I: Violation of the Uniform Code of Military Justice (UCMJ), Article 92, Specification: in that [Applicant], a person on active duty with the U.S. Army, did, at Grafenwohr, Germany, on or about 2230 hours, 22 November 1977, violate a lawful general regulation, to wit: U.S. Army Europe Regulation 632-10, by having in his possession a switch blade knife
- Charge II: Violation of the UCMJ, Article 128, Specification: in that [Applicant], did, at Grafenwohr, Germany, on or about 2230 hours, 22 November 1977, commit an assault upon another Soldier, by cutting him in the abdomen with a dangerous weapon likely to produce grievous bodily harm, to wit: a switch blade knife

7. On 12 December 1977, the applicant consulted with legal counsel and voluntarily requested discharge for the good of the service under the provisions of Chapter 10, Army Regulation 635-200. He understood that he may request discharge for the good of the service because charges have been preferred against him under the UCMJ which authorizes the imposition of a bad conduct or dishonorable discharge. By submitting the request, he acknowledged that he was guilty of the charges against him or of a lesser included offense therein contained which also authorizes the imposition of a bad conduct or dishonorable discharge. He stated that under no circumstances did he desire further rehabilitation for he had no desire to perform further military service.

a. He consulted with counsel who advised him of the nature of his rights under the UCMJ, the elements of the offenses with which he was charged, any relevant lesser included offenses thereto, and the facts which must be established by competent evidence beyond a reasonable doubt to sustain a finding of guilty; the possible defenses which appear to be available at the time; and the maximum permissible punishment if found guilty.

b. He understood he may be discharged under other than honorable conditions. He had been advised and understood the possible effects of a discharge under other than

honorable conditions and that, as a result of the issuance of such a discharge, he will be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered by the VA and that he may be deprived of his rights and benefits as a veteran under both Federal and state law. He also understood he may expect to encounter substantial prejudice in civilian life because of a discharge under other than honorable conditions.

8. On 23 December 1977, consistent with the chain of command recommendations, the separation authority approved the request for discharge for the good of service submitted under the provisions of Chapter 10, Army Regulation 635-200 by the applicant. He would be discharged from the service with the grade of private/E-1 and issued a discharge certificate under other than honorable conditions.

9. On 11 January 1978, he was discharged accordingly. His DD Form 214 shows he completed 1 year, 5 months, and 21 days of active service. It also shows in:

- item 9c (Authority and Reason): Chapter 10, Army Regulation 635-200, separation program designator (SPD) JFS
- item 9e (Character of Service): under other than honorable conditions
- item 10 (Reenlistment Code): RE-3, 3B

10. 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.

11. A Soldier who has committed an offense or offenses, the punishment for which under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial.

#### 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 an offense 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. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

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.

5/5/2025



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, sets forth the basic authority for the separation of enlisted personnel.
  - a. Paragraph 1-13a (Honorable Discharge) states an honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude.
  - b. Paragraph 1-13b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
  - c. Chapter 10 (Discharge for the Good of the Service) states a member who has committed an offense or offenses, the punishment for any of which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service.
3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) also known as Separation Codes, provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty and the SPD code to be entered on the DD Form 214. The SPD code "JFS" was the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, Chapter 10, by reason of in lieu of trial by court-martial. paragraph
4. 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//