

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 April 2025

DOCKET NUMBER: AR20240007929

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

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552), 3 March 2024
- DD Form 293 (Application for Review of Discharge from the Armed Forces of the United States), 3 March 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 2 June 1981

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 requests an upgrade of his discharge to either an honorable conditions discharge or an under honorable conditions (general) discharge.
3. He enlisted in the Regular Army on 13 December 1979.
4. DA Form 4187 (Personnel Action), on 6 March 1980, shows his duty status was changed from "present for duty" to "absent without leave (AWOL)" effective 5 March 1980.
5. DA Form 4187 on 10 March 1980, shows he surrendered to military authorities at Fort Bragg, NC and his duty status was changed from "AWOL" to "present for duty" effective 10 March 1980.
6. He accepted nonjudicial punishment (NJP) on 27 March 1980, under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), in that on or about 5 March 1980

without authority, absent himself from his unit, and did remain so absent unit on or about 10 March 1980. His punishment was seven days restriction to the company area. He elected not to appeal.

7. He accepted NJP on 23 April 1980, under the provisions of Article 15, UCMJ, in that on or about 14 April 1980, without authority, absent himself from his place of duty and did remain so absent until on or about 15 April 1980. His punishment was forfeiture of \$90.00 pay per month for one month and seven days in the Correctional Custody Facility. He elected to appeal and his appeal was denied.

8. DA Form 4187, on 8 July 1980, shows his duty status was changed from "present for duty" to "AWOL" effective 7 July 1980.

9. He accepted NJP on 2 September 1980, under the provisions of Article 15, UCMJ, in that on or about 7 July 1980, without authority, absent himself from his place of duty and did remain so absent until on or about 8 July 1980 in violation of Article 86, UCMJ. His punishment included forfeiture of pay (dollar amount illegible) per month for two months and 14 days of extra duty. He elected not to appeal.

10. He accepted NJP on 5 February 1981, under the provisions of Article 15, UCMJ, for having received a lawful command from his company commander to remain in the company area until transportation was available to take him to the field, willfully disobeyed in violation of Article 90, UCMJ. His punishment was forfeiture of \$125.00 pay for one month and seven days in the Correctional Custody Facility. He elected to appeal and his appeal was mitigated to seven days restriction to the battalion area and seven days of extra duty.

11. On 23 February 1981, his immediate commander initiated separation proceedings that he be separated under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, by reason – frequent incidents of a discreditable nature with civil or military authorities.

12. DA Form 3822-R (Report of Mental Status Evaluation), 25 February 1981 shows he was determined to be mentally responsible, meet retention standards, and had the mental capacity to participate in separation proceedings.

13. On 4 March 1981, his immediate commander recommended that he be separated from the service due to misconduct under the provisions of Army Regulation 635-200, Chapter 14.

14. On 18 March 1981, he consulted with counsel and requested consideration of his case by a board of officers (although he was not eligible). He further understood he

could encounter prejudice in civilian life if a general discharge was issued and he elected not to submit statements in his own behalf.

15. On 13 May 1981, the separation authority approved his separation, directed his reduction to the lowest enlisted grade, and that he receive an under other than honorable conditions discharge characterization of service.

16. He was discharged on 2 June 1981. His DD Form 2124 shows in:

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 1 year, 3 months, and 8 days
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 25 (Separation Authority) – Army Regulation 635-200, Chapter 14-33b(1)
- item 28 (Narrative Reason for Separation) – Misconduct – frequent incidents of a discreditable nature with civil or military authorities
- item 29 (Dates of Time Lost During This Period) –
 - 5 March 1980 – 9 March 1980
 - 14 April 1980 – 15 April 1980
 - 7 July 1980 – 7 July 1980
 - 30 March 1981 – 2 June 1981

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

18. 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:

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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. The Board considered the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. Upon review of the applicant's request and available military records, the Board found insufficient evidence of in-service mitigating factors for the misconduct and the applicant provided no evidence of post-service achievements or

letters of support to weigh a clemency determination. Based upon a preponderance of evidence, the Board determined that the character 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
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.

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

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 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

d. Paragraph 14-4 (Authority for Discharge or Retention) stated upon determination that a member is to be separated with a discharge under other than honorable conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority

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//