

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 February 2025

DOCKET NUMBER: AR20240007935

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

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record).

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:

a. There were no real reasons given for his discharge at the time other than his mental state was in question. He sought professional help on his own afterwards and have since lived a productive life. He is proud of his service and served honorably. He would like to have his discharge upgraded to show that due to the circumstances surrounding the mental state of not only himself but the others around him who were treated the same as he was, does not disadvantage them to say they served their country honorably.

b. He has never let any anything block him from being the best and positive person he can be. Reflecting on the past recently due to some family deaths he felt it was time to fix this detail in his life so his family will remember him in the positive light he has always promoted.

3. A review of the applicant's official records show:

a. He enlisted in the Regular Army for 4 years on 28 June 1984. The applicant completed training requirements and was awarded his military occupational specialty.

b. His record contains DA Forms 4856-R (General Counseling Form) which show he was counseled on multiple occasions for acts of misconduct and indiscipline as follows:

- failing to be at his appointed place of duty
- failing to report to additional training
- failing to report to formation on multiple occasions
- failing to report duty in proper uniform
- operating a vehicle with view impaired; speeding and operating his privately owned vehicle with expired tags
- driving his POV after he had been directed not to drive until it was properly tagged; and being 6 and a half hours late to duty
- sleeping on duty and not reporting to the motor pool

c. On 6 May 1986, the applicant accepted Non-Judicial Punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for failing to be at his appointed place of duty on two separate occasions (Building 3157 and extra training). His punishment consisted of reduction to the rank/grade of private/E-2 (suspended for 180 days), forfeiture of \$167.00 (suspended for 180 days), restriction for 14 days (suspended for 180 days), and extra duty for 14 days. He did not appeal.

d. On 25 June 1986, the applicant accepted NJP under the provisions of Article 15, UCMJ for failing to be at his appointed place of duty (Motor Pool). His punishment consisted of reduction to private/E-1, forfeiture of \$300.00 per month for 2 months, and extra duty for 45 days. He did not appeal.

e. On 8 July 1986, the applicant underwent a medical examination and mental status evaluation for "Chapter 13" administrative separation. He was medically and psychiatrically cleared for any separation and/or administrative action deemed appropriate by his unit commander.

f. On 17 July 1986, the suspension of the punishments of reduction to the grade of E-2, forfeiture of \$167.00, and restriction for 14 days was vacated based on the applicant failing to go at the time prescribed to his appointed place of duty on 28 May 1986.

g. On 29 July 1986:

(1) The applicant's immediate commander notified him that he was initiating action to recommend his separation from the Army under the provisions (UP) of chapter 13, paragraph 13-2, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), for unsatisfactory performance of duty; unqualified for service. The immediate commander also informed the applicant of his rights.

(2) The applicant acknowledged receipt of the separation action and indicated he had been afforded the opportunity to consult with military or civilian counsel. He declined the opportunity to consult with counsel and waived consideration of his case by a board of officers.

(3) The immediate commander formally recommended the applicant for separation UP of chapter 13, paragraph 13-2, AR 635-200, for unsatisfactory performance of duty. The immediate commander recommended discharge because the applicant had exhibited a defective attitude and an inability to expend his efforts in an effective manner. Despite counselling by his chain of command and NJP, the applicant continued to show no improvement. In relevant part, the formal recommendation indicates the mental status evaluation was attached as an enclosure.

h. On 5 August 1986, the separation authority approved the applicant's discharge UP of AR 635-200, chapter 13, paragraph 13-2, by reason of unsatisfactory performance and directed he be issued a General Discharge Certificate.

i. On 11 August 1986, the applicant was discharged accordingly. He completed 2 years, 1 month, and 14 days net active service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:

- item 23 (Type of Separation) – Discharge
- item 24 (Character of Service) – Under Honorable Conditions (General)
- item 25 (Separation Authority) – AR 635-200, Chapter 13
- item 28 (Narrative Reason for Separation) – Unsatisfactory Performance

j. On 16 June 1988, the Army Discharge Review Board (ADRB) voted unanimously to deny the applicant's request for an upgrade of his discharge. The ADRB concluded his discharge was proper and equitable.

#### 4. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his discharge from under honorable conditions (general) to honorable. He contends OMH as related to his request.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- Applicant enlisted in the Regular Army on 28 June 1984.
- Applicant's record contains DA Forms 4856-R (General Counseling Form) showing he was counseled on multiple occasions for:

- failing to be at his appointed place of duty
- failing to report to additional training
- failing to report to formation on multiple occasions
- failing to report to duty in proper uniform
- operating a vehicle with view impaired; speeding and operating his privately owned vehicle with expired tags
- driving his POV after he had been directed not to drive until it was properly tagged; and being 6 and a half hours late to duty
- sleeping on duty and not reporting to the motor pool
- On 6 May 1986, the applicant accepted Non-Judicial Punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for failing to be at his appointed place of duty on two separate occasions.
- On 25 June 1986, the applicant accepted NJP under the provisions of Article 15, UCMJ for failing to be at his appointed place of duty.
- On 17 July 1986, the suspension of the punishments of reduction to the grade of E-2, forfeiture of \$167.00, and restriction for 14 days was vacated based on the applicant failing to go at the time prescribed to his appointed place of duty on 28 May 1986.
- On 29 July 1986, the applicant's immediate commander notified him that he was initiating action to recommend his separation from the Army under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13, Paragraph 13-2, for unsatisfactory performance of duty; unqualified for service.
- On 11 August 1986, the applicant was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13, Paragraph 13-2, for Unsatisfactory Performance, with an Under Honorable Conditions (General) characterization of service. He completed 2 years, 1 month, and 14 days net active service.
- On 16 June 1988, the Army Discharge Review Board (ADRB) voted unanimously to deny the applicant's request for an upgrade of his discharge.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "there were no real reasons given for my discharge at the time other than my mental state was in question. I sought professional help on my own afterwards and have since lived a productive life. I am proud of my service and served honorably. I would like to have my discharge upgraded to show that due to the circumstances surrounding the mental state of not only myself but the others around me who were treated the same as I was, does not disadvantage us to say we served our country honorably."

d. Due to the period of service, no active-duty electronic medical records were available for review. Hardcopy medical documentation submitted for review related to the applicant's time in service show he participated in a medical examination on 8 July 1986, for the purpose of separation, and did not endorse any mental health concerns. A mental status evaluation, also dated 8 July 1986, cleared him for any administrative action deemed appropriate by command and did not identify any mental health concerns.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and has not been treated by the VA for any behavioral health condition. Contrary to the applicant's assertion of having "sought professional help" or mental health services after discharge, he did not submit any medical documentation post-military service substantiating his assertion of OMH.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or after his discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for any other mental health condition. And while the applicant self-asserted OMH, he did not provide any medical documentation substantiating any BH diagnosis.

h. Per Liberal Consideration guidelines, his assertion of OMH on his application is sufficient to warrant consideration by the Board.

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 applicant's lengthy pattern of misconduct leading to the applicant's separation and the lack of any mitigation found for such misconduct reflected in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	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.

//SIGNED//  
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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. 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 (AR) 15–185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (ABCMR). In pertinent part, it states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR will decide cases based on the evidence of record. It is not an investigative agency.

3. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. In pertinent part:

a. Chapter 13 (Separation for Unsatisfactory Performance) provides that a member may be separated per this chapter when it is determined that he or she is unqualified for further military service because of unsatisfactory performance.

b. An honorable discharge is a separation with honor. 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.

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.

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.

a. 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.

b. 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//