

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 April 2025

DOCKET NUMBER: AR20240008040

APPLICANT REQUESTS: reconsideration of his previous requests for an upgrade of his under other than honorable discharge to honorable.

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

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's cases by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AR2004106580 on 25 January 2005 and AR20050011307 on 25 May 2006.
2. The applicant states he has learned his lesson since his discharge from the military. He quit drinking, turned his life around, and would like a second chance for be able to qualify for Veterans Affairs benefits.
3. A review of the applicant's available service record shows:
 - he enlisted in the U.S. Army Reserve (USAR) on 1 July 1975
 - Orders Number 84-104 ordered him to active duty effective 19 June 1979, for a period of 18 months and 20 days
 - 24 September 1979, he accepted non-judicial punishment (NJP) for disobeying a lawful order from a senior noncommissioned officer (NCO) and two specifications of failure to go to his appointed place of duty at the time prescribed
 - 23 October 1979, he accepted NJP for two specifications of disobeying a lawful order from a senior NCO, two specifications of being disrespectful in language toward a senior NCO, and destroying government property
 - 6 February 1980, he was convicted by a summary court-martial of two specifications of violating Article 134 of the UCMJ by twice communicating a threat to kill a senior NCO; his punishment included confinement at hard labor for a period of 21 days
 - 18 March 1980, he accepted NJP for failing to go to his appointed place of duty at the prescribed time and absenting himself from his unit without authority

- 3 March 1980, his unit commander recommended separation under the provisions of paragraph 14-33, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), by reason of misconduct (frequent incidents of a discreditable nature)
- On 18 March 1980, he accepted NJP for failing to go to his appointed place of duty at the prescribed time and absenting himself from his unit without authority (11-12 March 1980)
- 28 March 1980, the applicant consulted with legal counsel of the rights available to him and of the effects of waiving those rights and waived his right to consideration by a board
- 2 April 1980, the separation authority approved his separation under the provisions of chapter 14, Army Regulation 635-200 with an under other than honorable conditions discharge
- 3 April 1980, he was discharged with an under other than honorable conditions characterization of service; his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 8 months and 28 days of active service with approximately 16 days of lost time

4. On 27 May 1983, 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.

5. On 25 January 2005, the ABCMR rendered a decision in Docket Number AR2004106580. The Board found the evidence of record confirmed the applicant's separation processing was accomplished in accordance with applicable regulation. The applicant's discharge accurately reflected his overall record of undistinguished service. In order to justify correction of a military record, the applicant must show to the satisfaction of the Board, or it must otherwise satisfactorily appear that the record is in error or unjust. The applicant failed to submit evidence that would satisfy the requirement, and his request was denied.

6. On 25 May 2006, the ABCMR rendered a decision in Docket Number AR20050011307. The Board found the applicant mentioned he had an alcohol problem which contributed to his infractions; however, there was no evidence, and the applicant provided no evidence to show alcohol contributed to his NJP and the resultant discharge under other than honorable conditions. The Board denied his request for reconsideration for a discharge upgrade stating that the overall merits of the case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR2004106580.

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 separated for misconduct with the commander citing misconduct (frequent incidents of a discreditable nature). The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. Furthermore, the Board found no error or injustice in reversing the decision rendered in AR2004106580 and AR20050011307.

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 amendment of the ABCMR decision rendered in Docket Number AR2004106580 on 25 January 2005 and AR20050011307 on 25 May 2006

4/15/2025



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. 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. 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.
 - b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.
2. 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//