

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 April 2025

DOCKET NUMBER: AR20240009008

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

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

- DD Form 149 (Application for Correction of Military Record), 24 June 2024
- applicant's four-page statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 10 August 1982
- National Archives Form 13038 (Certification of Military Service), 26 April 2018

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. His recruiter lied to him to get him to reenlist. He promised him he would get his rank back and the nonjudicial punishment (NJP) would be removed.

b. While he was in Mainz, Germany, he was promoted to specialist 4 (SP4) and put on the sergeant list. He ran into his mentor, a staff sergeant, who pushed him and kept asking him to take a drink with him. He refused and finally pushed the staff sergeant back, and was threatened with an Article 15. He received NJP, was reduced to private first class (PFC), and was sent back to Idar, Oberstein. He was 2 1/2 months from his expiration term of service.

c. The recruiting officer told him his NJP was removed, and his rank would be restored, so he reenlisted and was sent to Fort Bragg. After 30 days, he received his paycheck, and it showed his rank as PFC and pay grade as E-3. His pay was reduced.

d. He spoke to the Judge Advocate General (JAG) who informed him his reenlistment was voided. He did not go absent without leave (AWOL) but he received a court-martial and 30 days of hard labor.

e. After he returned home, he went to a trade school and became a carpenter for 30 years. He has a son and five grandchildren.

3. A review of the applicant's service record shows the following:

a. On 3 August 1978 he enlisted in the Regular Army. He attained the rank of SP4/E-4 on 4 June 1980.

b. He accepted NJP on the following:

(1) 28 January 1981, for failing to go at the prescribed time to his appointed place of duty. He received 14 days restriction and extra duty.

(2) 1 April 1981, he accepted NJP for communicating a threat to a staff sergeant. He was reduced to PFC, forfeiture of \$149.00, and 14 days of restriction and extra duty.

c. On 25 June 1981, he was honorably released from active duty in order to reenlist. His DD Form 214 for this period is not available in his records. A NARA Form 13038 reflects honorable service from 3 August 1978 to 25 June 1981 with his rank as PFC.

d. On 26 June 1981, he reenlisted for 4 years. His enlistment document shows his rank as specialist 4.

e. His records reflect the following misconduct:

(1) NJP on 6 January 1982, for disobedience of a lawful order from his first sergeant and disobedience of a lawful order from his superior commissioned officer on 7 December 1981. He was reduced to private 2/E-2 (suspended until 6 July 1982), forfeiture of \$200.00 pay per month for 2 months, and extra duty and restriction for 30 days. This NJP shows his rank as PFC.

(2) NJP on 25 February 1982, for wrongful use of provoking words on 16 February 1982 and on 18 February 1982. He forfeited \$150.00 pay for 1 month and was restricted for 14 days.

(3) Supplementary NJP on 2 March 1982 and he was reduced to private 2/E-2.

(4) Supplementary NJP on 22 March 1982 and his punishment of forfeiture of \$150.00 for 1 month was mitigated to \$144.00 for 1 month.

(5) NJP on 7 April 1982 for disobedience of a lawful order on 17 March 1982. He was reduced to private/E-1, forfeited \$275.00 per month for 2 months, and was ordered confined to correctional custody for 30 days (7 April 1982 to 7 June 1982).

(6) NJP on 22 June 1982 in which he forfeited \$75.00 for 1 month, received 7 days extra duty, and 7 days restriction as the result of:

- disobedience of a lawful order on 26 May 1982 (four instances)
- failure to go at the prescribed time on 26 May 1982 (two instances)
- disrespectful language on 26 May 1982 (two instances)

f. On 23 June 1982, the Company Commander, U.S. Army Retraining Brigade (USARB), recommended he be eliminated from service before the expiration of his term of service for misconduct because of frequent incidents of a discreditable nature, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-33. In this recommendation his company commander noted the applicant had received one court-martial and six instances of NJP; he was sent to the USARB; however, his actions since arriving precluded accomplishment of retraining. He has demonstrated little desire for returning to duty; and he received considerable counseling by members of the leadership team and members unit cadre. In his commander's opinion his record and failure to react constructively to the rehabilitation program indicated he should not be retained in the service. The court-martial orders showing the arraignment dates, the charges, and the sentence, are not available in his records.

g. A resume listing his attitude, conduct, and performance while at USARB lists two instances of NJP from his first period of honorable service. Copies of these NJPs are contained in his service records.

h. On 24 June 1982, he underwent a mental status evaluation. The examining psychologist found he was mentally responsible, he had the mental capacity to understand and participate in proceedings, and he met retention standards. On the same date he waived a separation physical.

i. The intermediate commanders recommended approval of his company commander's recommendation.

j. On 4 August 1982, he accepted NJP for possession of alcohol and received 6 days of restriction.

k. On an unspecified date, the separation authority approved his discharge with issuance of an Under Other than Honorable Conditions Discharge Certificate.

I. On 10 August 1982 he was discharged. His DD Form 214 reflects he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations - Personnel Separations), paragraph 14-33b(1), by reason of "frequent involvement in incidents of a discreditable nature with civil or military authorities," and a characterization of service of under other than honorable conditions. He completed 1 year and 25 days of net active service this period with 22 days' time lost. He completed 2 years, 10 days, and 24 days of total prior active service.

4. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

5. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. 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. Upon review of the applicant's petition and available military records, the Board determined that the evidence clearly reflects a sustained pattern of misconduct.

2. The Board noted, the applicant received multiple nonjudicial punishments, culminating in a recommendation by the Company Commander, U.S. Army Retraining Brigade, for separation prior to the expiration of his term of service due to frequent incidents of a discreditable nature, in accordance with Army Regulation 635-200, paragraph 14-33. The applicant underwent a mental status evaluation and was found psychologically fit to participate in administrative proceedings. The Board found no procedural errors or injustices in the separation process, nor in the characterization of service at the time of discharge. Furthermore, the applicant did not submit any documentation or argument in support of clemency. In light of the established misconduct, the absence of mitigating evidence, and the proper execution of administrative actions, the Board found no error. Therefore, the Board denied relief.

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), in effect at the time, provided the authority and general provisions governing the separation of enlisted personnel prior to the end of their expiration term of service to meet the needs

of the service and its members. It provided the criteria governing issuance of honorable, general, and under other than honorable discharge certificates.

a. Paragraph 1-13(a) provided 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 1-13(b) provided 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. The recipient of a general discharge is normally a member whose military record and performance is satisfactory. The member may have had frequent nonjudicial punishments but not for serious infractions. He may be a troublemaker, but his conduct is not so bad as to require discharge for cause or a discharge under less than honorable conditions.

c. Paragraph 1-13(c) provided a discharge under other than honorable condition is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, for security reasons, or for the good of the service.

d. Paragraph 14 Separation for Misconduct. This chapter establishes policy and prescribes procedures for the elimination of enlisted personnel for misconduct by reason of fraudulent enlistment/reenlistment, conviction by civil court (members who have been initially convicted or adjudged juvenile offenders), desertion and absence without leave, and other acts or patterns of misconduct.

e. Paragraph 14-33(b)(1). Patterns of Misconduct. Members are subject to separation under the provisions of this section for patterns of misconduct: frequent incidents of discreditable nature with civil or military authorities.

3. 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/NR), on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

//NOTHING FOLLOWS//