

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2025

DOCKET NUMBER: AR20240009894

APPLICANT REQUESTS:

- Reconsideration of his previous request for an upgrade of his under other than honorable conditions discharge
- a video and/or telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Separation from Active Duty), 30 June 1978 – reflective of the applicant's service on active duty from 23 June 1976 – 30 June 1978
  - Item 9c. (Authorization and Reason) – Paragraph 14-33b. (1), Army Regulation 635-200, Separation Program Designator: JKA
  - Item 9e. (Character of Service): Under Other Than Honorable Conditions
- Privacy Form – reflective of the applicant authorizing release of information to his Congressional Representative
- Email communication – reflective of communication concerning the applicant's submitted request for a discharge upgrade
- Congress of the U.S. letter, 27 August 2024 – reflective of the applicant's State Representatives interest in the applicant's submitted request

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 in pertinent part that he was promised that upon completion of 24 months of service, he would be permitted to attend Officer Candidate School (OCS). However, upon completion of his service he was informed that the Army had already invested too much money in him to send him to OCS.

3. A review of the applicant's service records reflects the following:

- On 23 June 1976 – he enlisted in the Regular Army for 4 years
- On or about 21 April 1978 – the applicant was recommended for elimination from military service in accordance with (IAW) Army Regulation (AR) 635-200, Chapter 14; immediate separation was deemed appropriate as he had already received nonjudicial punishment (NJP) on two occasions from two different commanders
- On 16 June 1978 – a board was conducted to determine whether the applicant should be discharged from military service due to frequent incidents of a discreditable nature with civil or military authorities (misconduct)
- On 23 June 1978 – a waiver of rehabilitative transfer was approved; the applicant would be discharged IAW AR 635-200, Chapter 14, Paragraph 14-33b.(1) with an Under Other Than Honorable Character of Service
- On 26 June 1978 – the applicant was reduced to private (PVT)/E-1 effective 23 June 1978
- On 30 June 1978 – the applicant was discharged from military service; DD Form 214 reflects the following:
  - Item 9c. (Authorization and Reason) – Paragraph 14-33b. (1), Army Regulation 635-200, Separation Program Designator: JKA
  - Item 9e. (Character of Service): Under Other Than Honorable Conditions
- On 28 March 1995 – the Army Discharge Review Board (ADRB) conducted a review upon the applicant's request for an upgrade of his Character of Service; recommended that a change to his reason for separation be changed to Misconduct, Under AR 635-200; no other changes were authorized
- On 17 May 1995 - a board was conducted to consider the applicant's request for an upgrade of his Character of Service; the board noted that there was no basis for granting his request as he failed to submit sufficient evidence to demonstrate the existence of a probable error or injustice

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 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 under the provisions of Army Regulation 635-200, chapter 14-33. The Board determined his discharge and the characterization of service the applicant received upon separation was appropriate and there was no basis to reverse the decision rendered in Docket Number AC95-06681.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 to reverse the decision rendered in Docket Number AC95-06681.

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of soldiers for a variety of reasons. Chapter 14, Section V (Other Acts or Patterns of Misconduct) provides that Soldiers are subject to action per this section for the following:

a. Paragraph 14-33b. (Patterns of Misconduct)

- frequent incidents of discreditable nature with civil or military authorities
- an established pattern for shirking
- an established pattern showing dishonorable failure to pay just debts
- an established pattern showing dishonorable failure to contribute adequate support to dependents or failure to comply with orders

b. Paragraph 1-13 (Types of Administrative Discharges/Character of Service) provides that:

- 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
- 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
- an Other Than Honorable Conditions discharge is an administrative separation from the service under conditions other than honorable; may be used for misconduct, for security reasons or for the good of the service

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 on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency

generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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.

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 on the basis of equity, injustice, or clemency grounds, Boards 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.

4. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//