

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 April 2025

DOCKET NUMBER: AR20240010763

APPLICANT REQUESTS:

- Upgrade of his under other than honorable conditions discharge
- Permission to appear personally before the Board

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, in effect:

- He feels his company commander (Captain (CPT) R__ F. P__) was prejudiced against him; the applicant maintains CPT P__'s decisions to court-martial and imprison him were unjustified; the applicant remained in confinement until his separation from the Army
- CPT P__ wrongfully attacked him with intimidation, all because the applicant stole a \$9.00 compact disc from the Post Exchange
- In seeking this upgrade, the applicant points out that he does not want any financial gain; he is trying to join the "Am Vets," and he is hoping to improve his standing in society

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

- On 28 August 1979, after obtaining his parent's permission, the applicant enlisted into the Regular Army for 3 years; he was 17 years old

- Upon completion of initial entry training and the award of military occupational specialty 13E (Cannon Fire Direction Specialist), orders assigned him to Korea; he arrived at his new unit, on 12 December 1979
- In March 1980, the applicant's section chief awarded him with a letter of appreciation for outstanding professionalism; on 28 November 1980, the applicant completed his tour in Korea, and orders reassigned him to Fort Sill, OK; he arrived at his new duty station, on 9 January 1981
- Effective 1 March 1981, the applicant's leadership promoted him to specialist four (SP4)/E-4
- On 6 March 1981, the applicant accepted nonjudicial punishment (NJP), under Article 15, Uniform Code of Military Justice (UCMJ), for possession marijuana; the punishment by the imposing commander (then First Lieutenant (1LT) R__ F. P__) included reduction to private first class (PFC)/E-3
- On 2 April 1981, the applicant accepted NJP from his battery commander (1LT R__ F. P__); he was charged with failing to obey a lawful order that had suspended his on-post driving privileges; he had an additional charge for making a false sworn statement after he claimed he had not been driving
- On 20 August 1981, the applicant accepted NJP for failing to report to battery formation, on 6 August 1981, and failing to report for battalion formation, on 10 August 1981; (now CPT) R__ F. P__ 's punishment consisted of extra duty, restriction and a suspended forfeiture on \$100
- On 27 August 1981, CPT R__ F. P__ vacated the applicant's suspended forfeiture after the applicant broke restriction
- On 8 December 1981, the applicant accepted NJP for failing to report for battery formation; along with extra duty and restriction, CPT R__ F. P__ imposed a suspended forfeiture of \$125; however, on 21 December 1981, the commander vacated the suspension because the applicant failed to report of physical training
- On 15 January 1982, the applicant accepted NJP from his battalion commander (Lieutenant Colonel R__ A. V__) for using disrespectful language toward a staff sergeant, by saying, "You smart a__"; the battalion commander additionally charged the applicant with failing to report to guard duty
- The battalion commander's punishment consisted for extra duty, restriction, a forfeiture, and reduction to private (PV1)/E-1
- On 27 January 1982, the applicant's battery commander initiated bar to reenlistment action against him, citing the applicant's previous NJP actions
- The commander also noted the applicant had been involved in numerous incidents, to include a driving while intoxicated conviction; although the applicant achieved a 96 percent on his skill qualification test, the applicant failed to apply himself in a productive manner and associated with disreputable individuals
- On 5 February 1982, the battalion commander approved the bar to reenlistment
- On 9 March 1982, a Post Exchange security officer observed the applicant leave the store without paying for an 8-track tape; the security officer detained the

applicant and called the military police (MP); the MPs apprehended the applicant upon their arrival and subsequently released him to his unit

- On 25 March 1982, the applicant's command preferred court-martial charges against him for stealing an 8-track tape valued at \$6.50; the applicant's chain of command recommended trial by summary court-martial
- On 30 March 1982, after consulting with counsel, the applicant requested separation under chapter 10 (Discharge for the Good of the Service), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel)
- In his separation request, the applicant affirmed he had made his decision of his own free will and had not been subject to any coercion; he additionally acknowledged he was guilty of the charge preferred against him, and he opted not to submit statements in his own behalf
- On 9 April 1982, the separation authority approved the applicant's separation request and directed his under other than honorable conditions discharge; on 15 April 1982, orders discharged the applicant accordingly
- The applicant's DD Form 214 shows he completed 2 years, 7 months, and 18 days of his 3-year enlistment contract; he was awarded or authorized the Army Service Ribbon, Overseas Service Ribbon and a marksmanship qualification badge

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, available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the pattern of misconduct.
2. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. Furthermore, the Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of his under other than honorable conditions (UOTHC) discharge. Therefore, the Board denied relief.
3. 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:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF
: : : GRANT PARTIAL RELIEF
: : : GRANT FORMAL HEARING
[REDACTED] [REDACTED] [REDACTED] 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.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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), in effect at the time, prescribed policies and procedures for the administrative separation of enlisted personnel.

a. Paragraph 1-13a (Honorable Discharge) stated an honorable discharge was separation with honor.

(1) Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate.

(2) Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when the Soldier's subsequent honest and faithful service over a greater period outweighed the disqualifying entries found in his/her record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 1-13b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

c. Section II (Secretarial Authority), Paragraph 5-3 (Authority). Separation under this paragraph was the Secretary of the Army's prerogative. The separation of any Soldier of the Army under this authority was based on Secretary of the Army determination that separation was in the best interests of the Army.

d. Chapter 10 (Discharge for the Good of the Service) applied to Soldiers who had committed an offense or offenses for which the punishment under the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial included a punitive (i.e. bad conduct or dishonorable) discharge.

(1) Soldiers could voluntarily request discharge upon the preferral of court-martial charges; commanders were responsible for ensuring such requests were personal decisions, made without coercion, and following access to counsel. The Soldier was to be given a reasonable amount of time to consult with counsel prior to making his/her decision.

(2) The Soldier was required to make his/her request in writing, which certified he/she had been counseled; understood his/her rights; could receive an under other than honorable conditions character of service; and recognized the adverse nature of such a character of service.

3. The Manual for Courts-Martial in effect at the time showed a punitive discharge among the maximum punishments for violations of UCMJ Article 121 (Larceny of Property of a Value of \$50 or Less).

4. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority; the regulation directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in items 26 (Separation (Separation Program Designators (SPD) Code) and 28 (Narrative Reason for Separation). For item 27 (Reenlistment (RE) Code), the regulation referred preparers to AR 601-280 (Army Reenlistment Program)).
5. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with chapter 10, AR 635-200 were to receive an SPD of "JFS" and have the narrative reason for separation: "Administrative Discharge – Conduct Triable by Court-Martial" entered on their DD Form 214.
6. AR 601-280, in effect at the time, covered eligibility criteria, policies, and procedures for the Active Army reenlistment program.
 - a. Paragraph 2-23 (Persons Ineligible for Immediate Reenlistment). Person discharge under the provisions of chapter 10, AR 635-200 were ineligible for immediate reenlistment but could apply for a waiver at a later date.
 - b. Appendix D (RE Codes) included the following list of the RE codes:
 - RE-1 – Soldiers completing their term of active service who were considered qualified to reenter the U.S. Army; they were qualified for enlistment if all other criteria were met
 - RE-3 – Soldiers who were not considered fully qualified for reentry or continuous service at time of separation, but their disqualification could be waived
7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 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.

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.

8. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

c. Paragraph 2-11 (ABCMR Hearings) states applicants do not have a right to a hearing before the ABCMR; however, the Director or the ABCMR may grant a formal hearing.

//NOTHING FOLLOWS//