

5. Three DA Forms 4187 (Personnel Action) show the following changes in the applicant's duty status:

- Present for Duty (PDY) to Confined by Civil Authorities on 15 July 1975
- Confined by Civil Authorities to PDY on 16 July 1975

6. The applicant accepted non-judicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice on 12 September 1975, for willfully disobeying a lawful order from his superior noncommissioned officer, on or about 10 September 1975; and for failing to go at the time prescribed to his appointed place of duty on two occasions, on or about 11 September 1975. His punishment consisted of reduction to the rank of private/E-2, forfeiture of \$89.00 pay, 14 days of extra duty, and 14 days of restriction.

7. Two DA Forms 4187 show the following changes in the applicant's duty status:

- PDY to Absent Without Leave (AWOL) on 22 September 1975
- AWOL to PDY, surrendered to unit on 25 September 1975

8. The applicant accepted non-judicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice, on 23 October 1975 for being AWOL on two occasions, from on or about 22 September 1975 until on or about 25 September 1975, and from on or about 29 September 1975 until on or about 2 October 1975. His punishment consisted of reduction to the rank of private/E-1, forfeiture of \$84.00 pay, 14 days of extra duty, and 14 days of restriction.

9. DA Forms 4187 show the following changes in the applicant's duty status:

- PDY to AWOL on 1 December 1975
- AWOL to PDY, surrendered to Halfway House on 4 December 1975
- PDY to AWOL on 16 December 1975
- AWOL to PDY, surrendered to unit on 22 December 1975
- PDY to AWOL on 23 December 1975
- AWOL to Dropped from Unit Rolls (DFR) on 5 January 1976
- DFR to PDY, surrendered to unit on 13 January 1976

10. Before a special court-martial at Fort Bliss, TX, the applicant was found guilty of failing to go at the time prescribed to his appointed place of duty, on or about 15 December 1975, and for being AWOL on two occasions from on or about 16 December 1975 until on or about 22 December 1975, and on or about 23 December 1975 until on or about 13 January 1976. His sentence included forfeiture of \$125.00 pay per month for three months and confinement at hard labor for 75 days. The sentence

was adjudged on 30 January 1976. The sentence was approved and ordered duly executed on 10 February 1976.

11. The available record is void of the applicant's notification of his commander's intent to initiate separation action against him. However, he consulted with legal counsel on 9 March 1976.

a. He was advised of the basis for the contemplated separation under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13, by reason of unfitness.

b. He acknowledged the rights available to him, the effects of a waiver of his rights, and elected not to submit a statement in his own behalf.

12. On 10 March 1976, the applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, paragraph 13-5, by reason of unfitness – frequent incidents of a discreditable nature. The commander further stated the applicant's conduct and efficiency ratings were unsatisfactory. On that same date, the intermediate commander concurred with the recommended separation action.

13. The separation authority approved the recommended separation action on 11 March 1976 and further directed issuance of an Undesirable Discharge Certificate.

14. Accordingly, the applicant was discharged on 15 March 1976 under the provisions of Army Regulation 635-200, paragraph 13-5a (1). His DD Form 214 (Report of Separation from Active Duty) confirms his service was characterized as UOTHC. He was credited with 1 year, 5 months, and 26 days of net active service, with 65 days of lost time.

15. The Army Discharge Review Board (ADRB) considered the applicant's request for an upgrade of his characterization of service on 28 November 1977. After careful consideration, the ADRB determined he was properly and equitably discharged and denied his request for relief.

16. Regulatory guidance provided for separation for unfitness, which included frequent incidents of a discreditable nature. When separation for unfitness was warranted, an undesirable discharge was normally considered appropriate.

17. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 correction of the records of the individual concerned.

2/12/2024

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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, USC, 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides 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. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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.
3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - a. 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.
 - b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Paragraph 13-5(a), as then in effect, provided for separation for unfitness, which included frequent incidents of a discreditable nature, sexual perversion, drug abuse, shirking, failure to pay just debts, failure to support dependents and homosexual acts. When separation for unfitness was warranted, an undesirable discharge was normally considered appropriate.
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/NR) 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.

//NOTHING FOLLOWS//