

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 November 2023

DOCKET NUMBER: AR20230004713

APPLICANT REQUESTS: reconsideration of his previous request to upgrade his under other than honorable conditions (undesirable) discharge to honorable.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 149 (Application for Correction of Military Record)
- Letters from the Department of Veterans Affairs (VA), 21 October 2022 and 22 December 2022

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) on 19 October 1977.

2. The applicant states, in effect, the VA decided his military service from 27 July 1973 through 15 October 1974 was honorable. He is 20 percent disabled for his hearing. His claim for his feet was deferred as of 4 January 2023. He is requesting that his undesirable discharge be upgraded to an honorable. On 21 October 2022, the VA decided his service was honorable.

3. A memorandum for the Adjutant General, from the ABCMR, dated 27 October 1977, states the Board determined on 19 October 1977, insufficient evidence was presented to indicate a probable material error or injustice regarding the applicant's request to upgrade his discharge and the application was denied. The applicant's application and complete Board record are not available for the Board's consideration. The applicant's subsequent requests to the Board in AR20050017374, dated 28 July 2006; AR20100025338, dated 18 February 2011; and AR20120000247, dated 23 February 2012 were returned to the applicant without Board action.

4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment Contract - Armed Forces of the United States), dated 27 July 1973 shows the applicant enlisted in the Regular Army for a period of 3 years.

b. DA Form 2627-1 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)), dated 6 November 1973, shows the applicant accepted Nonjudicial Punishment (NJP) for absenting himself from his unit without authority for the period 4-5 November 1973. His punishment was forfeiture of \$30.00 for one month, restriction and extra duty for six days. He did not appeal his punishment.

c. DA Form 20 (Enlisted Qualification Record) shows in item 44 (Time Lost Under Section 972, Title 10, USC and Subsequent to Normal Expiration Term of Service) the applicant was Absent without Leave (AWOL) from 23 May 1974 through 28 May 1974 for a total of 6 days and from 10 June 1974 through 13 August 1974 for a total of 65 days.

d. DA Form 2627-1 dated 24 April 1974 shows the applicant accepted NJP for failing to go to his appointed place of duty. His punishment was reduction to Private (PVT)/E-1 (suspended for 60 days); forfeiture of \$75.00 for one month; and 14 days of extra duty. The applicant did not appeal his punishment.

e. DA Form 2627-2 (Record of Appellate or Other Supplementary Actions Under Article 15, UCMJ), dated 29 May 1974, shows the suspension of punishment for reduction to PVT was vacated.

f. The documentation showing the applicant went AWOL or being Dropped from Rolls (DFR) were not available for the Board's consideration. DA Form 4187 (Personnel Action) shows the applicant's duty status was changed from DFR to present for duty on 14 August 1974.

g. DD Form 458 (Charge Sheet), dated 16 August 1974, shows the applicant's commander referred a charge of AWOL from on or about 10 June 1974 to on or about 14 August 1974, for the applicant to court-martial.

h. Statement from the applicant's commander, dated 20 August 1974, states on 14 August 1974, the applicant returned from 66 days of AWOL. He was asked why the applicant went AWOL and the applicant stated he had family and financial problems that kept him from performing. The applicant had not asked for leave.

i. Memorandum from the applicant's Trial Defense attorney, dated 22 August 1974, informed the applicant he was pending court-martial for being AWOL for 64 days. The applicant desired to submit a request for discharge for the good of the service. The memorandum informed the applicant of his rights concerning his request for discharge.

j. Memorandum from the applicant, Subject: Request for Discharge for the Good of the Service, dated 26 August 1974, wherein the applicant requested discharge for the good of the service. The applicant made the request of his own free will and had been afforded the opportunity to consult with appointed counsel. He understood by submitting the request his discharge could be characterized as under other than honorable conditions. The applicant submitted a statement, with his request, dated 26 August 1974, which states in effect, he joined the Army for the benefits, but he wanted to get out of the Army. He had a lot of trouble at home, and he wanted to get out or he might go AWOL again and he did not want that.

k. DA Form 3836 (Notice of Return of U.S. Army Member from Unauthorized Absence), dated 4 September 1974, shows the applicant went AWOL on 7 June 1974 and was DFR on 9 July 1974. He surrendered to military authorities on 14 August 1974.

l. 1st Indorsement, Subject: Request for Discharge for the Good the Service, dated 9 September 1974 from the applicant's immediate commander recommended approval of the applicant's request stating the applicant was placed in pre-trial confinement as a result of an AWOL offense. The commander recommended the applicant receive an undesirable discharge.

m. DA Form 4126-R (Bar to Enlistment/Reenlistment Certificate), dated 10 September 1974 shows the applicant accepted NJP on 6 November 1973 for being AWOL from 4 November 1973 through 5 November 1973, on 30 April 1974 for failing to go to his appointed place of duty on 22 April 1974, and on 5 June 1974 for being AWOL from 23 May 1974 through 28 May 1974. The applicant's commander stated the applicant had proven himself to be a substandard Soldier by his poor attitude and his unsatisfactory duty performance. He had no motivation and no desire to remain a Soldier in the U.S. Army. The applicant was pending elimination under the provisions of Chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). The applicant's battalion commander recommended the applicant be barred from enlistment/reenlistment.

n. Indorsements 2 and 3 Subject: Request for Discharge for the Good of the Service, shows the applicant's chain of command recommended approval of his request for discharge with an issuance of an undesirable discharge.

o. Standard Form 88 (Report of Medical Examination), dated 12 September 1974, shows the applicant had no medical conditions and was qualified for separation from the Army.

p. DA Form 3822-R (Report of Mental Status Evaluation), dated

13 September 1974, shows the applicant had no significant mental illness, was mentally responsible, able to distinguish right from wrong, able to adhere to the right, had the mental capacity to understand and participate in board proceedings, and met retention standards.

q. Memorandum from the Adjutant, Subject: Bar to Enlistment/Reenlistment, dated 13 September 1974 and the 1st Indorsement from the Assistant Adjutant, dated 16 September 1974 recommended approval of the applicant's Bar to Enlistment/Reenlistment.

r. 4th Indorsement Subject: Request for Discharge for the Good of the Service, dated 16 September 1974 returned the applicant's request for inclusion of the applicant's medical examination, mental status, and Article 15 dated 5 June 1974. The 5th Indorsement, dated 17 September 1974 indicated the Article 15, dated 5 June 1974 had been deleted. The 6th Indorsement forwarded the recommendation for further action.

s. 2d Indorsement subject Bar to Enlistment/Reenlistment, dated 20 September 1974 approved the applicant's bar to enlistment.

t. DA Form 2496 (Disposition Form) Subject: Request for Withdrawal of Request for Discharge for the Good of the Service, dated 26 September 1974, states the applicant requested to withdraw his request for discharge for the good of the service. All statements, acknowledgements, and implications of the request were retracted, and the applicant affirmed his desire for rehabilitation and continued military service. The applicant provided a handwritten letter with his request, which states, in effect, he had reconsidered the weight of a bad discharge and he did not want that sort of thing hanging over his head for the rest of his life. He felt he could be given the chance to stay in the Army after his court-martial and he would try his best to be a good Soldier. He had learned that AWOL did not pay, and he knew he would not do it again. He wanted to request if there was any way to work it out to stay at Fort Ord, CA, after his court-martial.

u. Memorandums from the applicant's company, battalion, and brigade commanders, dated 27 September 1974, recommended disapproval of the applicant's request to withdraw his request for discharge for the good of the service. The separation authority disapproved the applicant's request to withdraw his request for discharge for the good of the service.

v. 7th Indorsement, Subject: Request for Discharge for the Good of the Service, dated 6 October 1974, directed the applicant's discharge for the good of the service with an undesirable discharge certificate.

w. DD Form 214 (Report of Separation from Active Duty) shows the applicant was discharged from the Army on 15 October 1974. He had completed 1 year and 8 days of active service. He had 71 days lost. The applicant's reenlistment code was not indicated on his DD Form 214.

x. Letters from the Army Discharge Review Board (ADRB), dated 4 April 1975, 17 November 1988, and 12 January 1989 informed the applicant after consideration of the applicant's record and all other available evidence, the ADRB determined the applicant was properly discharged and the applicant's request for a change in the type and nature of his discharge had been denied.

5. The applicant provides letters from the VA, dated 21 October 2022 and 22 December 2022, which state in effect:

a. 21 October 2022, the VA decided the applicant's military service for the period of 27 July 1973 through 15 October 1974 was honorable for VA purposes. The applicant and his dependents may be eligible for VA benefits for that period of military service.

b. 22 December 2022, the applicant received service-connected disability for hearing loss with an evaluation of 10 percent and for tinnitus with an evaluation of 10 percent. His combined rating was 20 percent.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records and published DoD guidance for liberal consideration and clemency in determining discharge upgrade requests. The Board considered the misconduct and whether there was sufficient evidence of mitigating circumstances to weigh in favor of clemency determination. After due consideration of the request, and, in the absence of post-service achievements or letters of reference to weigh in support of a clemency determination, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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 to amend the decision of the ABCMR set forth in Docket Number AR20120000247 on 23 February 2012.

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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. AR 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record; it is not an investigative body. 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.

3. AR 635-200, in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. An honorable discharge was a separation with honor. Issuance of an honorable discharge was conditioned upon proper military behavior and proficient duty performance. A Soldier's service was to be characterized as honorable based on conduct ratings of at least "Good"; efficiency ratings of at least "Fair"; no general court-martial, and no more than one special court-martial conviction.

b. A general discharge was a separation from the Army under honorable conditions, where the Soldier's military record was not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 permitted a Soldier to request discharge for the good of the service when they had committed an offense or offenses which, under the Uniform Code of Military Justice and the Manual for Courts-Martial, United States 1969 (Revised Edition), included a bad conduct or dishonorable discharge as a punishment. The Soldier could submit such a request at any time after court-martial charges were preferred. Once approved, an undesirable discharge was normally furnished, but the discharge authority could direct either an honorable or general discharge, if warranted.

4. The Manual for Courts-Martial Table of Maximum Punishments showed Article 86 (AWOL for more than 30 days), UCMJ, included a punitive discharge.

5. 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 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

//NOTHING FOLLOWS//