

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 September 2024

DOCKET NUMBER: AR20230005436

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

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Army Discharge Review Board)
- DD Form 214 (Report of Separation from Active Duty)

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 his local social security office insisted that he apply for an upgraded characterization of service; he adds, "If the Judge Advocate General (JAG) had thought I acted dishonorably, he would have said so." He provides additional information in a self-authored statement:

a. In early 1976, the Army assigned him to the fixed wing division of an airfield near Fort Belvoir, VA; his duty position was fixed wing aircraft repairman. Although he and the other Soldiers worked at the airfield, their quarters were on Fort Belvoir.

b. As the Vietnam conflict came to a close in 1975, the Army was having to deal with Soldiers from different parts of the world at a time when the country's culture was changing. It appeared that a lot of Soldiers were smoking marijuana, so, in or around 1976, the government began an effort to identify marijuana users and, starting in 1977, it required mandatory urinalysis testing.

c. Since the Army initially did not require urinalysis testing, the leaders used some "pretty weird ways" to identify and deal with drugs on Army bases; in the applicant's case, because the unit headquarters and barracks were on Fort Belvoir, it became Fort

Belvoir's task to identify drug users, and the military police came up with a plan to bring in "a bunch of female military personnel and use them as undercover operators, both on and off the military base. Drugs were such a big thing with our government in D.C. (District of Columbia) at the time...it was crazy."

d. Because Fort Belvoir is the closest military base to Washington D.C., the government started their programs there, and they began to target personnel with high security clearances, like Soldiers at the airfield. What they failed to mention anywhere in the record was that the airfield provided all VIP (very important person) flights in and out of the D.C. area, and it was the applicant's unit that maintained and repaired all of the aircraft for the Pentagon staff, the Federal Bureau of Investigation, and the Central Intelligence Agency.

e. "I guess what I'm trying to say is when the government decided to go after the weed smokers, (they) came out hard. In my case, they used a female undercover officer to convince and coerce me to get her weed, and she used everything she could, including sex, to convince me. In short, I was arrested for selling weed to her."

f. Despite the applicant's arrest occurring in Virginia, his court-martial convened at Fort McNair in Washington, D.C., and his JAG attorney at first wanted the applicant to fight the charges because, "it was basically told (to) me that it was a witch hunt that I was caught up in." The prosecution countered that, if the applicant fought the charges and the court found the applicant guilty, he would face 20 years in confinement; instead they offered the applicant a deal, saying that, if he pleaded guilty, gave up his security clearance, and signed a paper saying he would never seek reentry into the military, they would process him out of the Army in 24 hours with no jail time. The prosecutors were only interested in numbers to show they were doing a great job.

g. They explained that the applicant would receive an under other than honorable conditions character of service because he had had some officers testify in his behalf, and the military judge did not believe the applicant had acted dishonorably. The applicant was just one of many Soldiers who were all going through the same thing.

h. The applicant acknowledges he never sought to reverse his discharge because "our government is still down on the subject of weed, and I'm happy with the benefits that I do have. I don't believe I acted dishonorabl(y) in my actions...I was young then and it was a long time ago. Sure, I would love an upgrade, but I('m) happy for the benefits I have now."

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

a. On 30 May 1972, the applicant enlisted in the Regular Army. Upon completion of initial entry training and the award of military occupational specialty (MOS) 63F

(Recovery Specialist), orders assigned him to Germany, and he arrived at his new unit, on or about 15 November 1972. Effective 1 December 1973, the applicant's leadership promoted him to specialist four (SP4)/E-4.

b. On 4 April 1974, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ)) for having been absent without leave (AWOL) from 22 to 31 March 1974 (9 days).

c. On 13 August 1974, the Army honorably discharged the applicant so he could immediately reenlist; on 14 August 1974, the applicant reenlisted for 4 years. As part of his enlistment agreement, he elected to attend training for MOS 67G (U-8/U-21 Aircraft Repairman).

d. On 28 January 1975, the applicant accepted NJP for failing to report to his place of duty at the time prescribed. On 5 May 1975, the applicant completed his tour in Germany, and, after graduating from 67G training, orders assigned the applicant to an aviation unit at Fort Belvoir; he arrived, on 14 October 1975.

e. On 5 February 1976, and consistent with the applicant's plea, a special court-martial found the applicant guilty of possessing 7 ounces of marijuana. The court sentenced the applicant to 30 days extra duty, forfeiture of \$75 per month for 2 months, and reduction to private first class (PFC)/E-3. On 12 March 1976, the special court-martial convening authority approved the sentence and directed its execution.

f. On 17 June 1976, the applicant's commander initiated a bar to reenlistment action against the applicant, citing the applicant's special court-martial conviction and his January 1975 NJP action. The commander added:

(1) "Since being assigned to (the unit), on 14 Oct(ober) (19)75, [applicant's] conduct & attitude has been less than adequate, and he has exhibited traits which are detrimental to the maintenance of good law and order. In addition to the above disciplinary proceedings, he has been involved in several discreditable incidents with the civil authorities; on 28 May (19)76 , he was released to the (local police) for failure to appear in court; on 14 June (19)76 , he was arrested by civil authorities on 'grand theft after trust' charges."

(2) "These incidents indicate that [applicant] cannot adapt to military life or manage his personal affairs, and his general desirability for retention are not consistent with the high standards demanded by the U.S. Army."

(3) On 15 July 1976, the applicant's higher command approved the bar to reenlistment.

g. On 17 September 1976, the applicant accepted NJP for having been AWOL, from 7 September to 9 September 1976; the punishment included reduction to private (PV1)/E-1.

h. The applicant's separation packet is unavailable for review; however, his service record includes his DD Form 214, which shows that, on 26 November 1976, the Army discharged him under other than honorable conditions. The DD Form 214 additionally reflects the following:

(1) Items 6a (Grade, Rate, or Rank) and b (Pay Grade) – Private (PV1)/E-1

(2) Item 9c (Authority and Reason) – Army Regulation (AR) 635-5-1 (Separation Program Designators (SPD)); SPD "JKA" (Frequent Incidents of a Discreditable Nature with Civil or Military Authorities)

(3) Item 10 (Reenlistment (RE) Code) – "RE-4" (non-waivable disqualification for reenlistment).

(4) Item 18 (Record of Service):

- Item 18 (a) (Net Active Service This Period) – 2 years, 3 months, and 11 days
- Item 18 (e) (Total Service for Pay) – 4 years, 5 months, and 25 days

(5) Item 26 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized): National Defense Service Ribbon.

BOARD DISCUSSION:

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 frequent incidents of a discreditable nature with civil or military authorities, including nonjudicial punishment for being absent without leave and a Special Court-Martial conviction for possessing 7 ounces of marijuana. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant provided no documentation to support his request, including post-service

achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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 for correction of the records of the individual concerned.

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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, 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, in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. Paragraph 1-9d (Honorable Discharge) stated an honorable discharge was a separation with honor. Separation authorities should condition the issuance of an honorable discharge on proper military behavior and proficient duty performance. A separation authority could characterize a Soldier's service as honorable based on conduct ratings of at least "Good"; efficiency ratings of at least "Fair"; the Soldier could not have any general courts-martial, and the regulation allowed no more than one special court-martial conviction.

b. Paragraph 1-9e (General Discharge). 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. Paragraph 13-5a (1) Soldiers determined by their commanders to have had frequent incidents of a discreditable nature with civil or military authorities could be separated under this provision; separation authorities were to issue these Soldiers an undesirable discharge certificate under other than honorable conditions.

3. AR 601-280 (Army Reenlistment Program), in effect at the time, stated:

a. Paragraph 2-23 (Nonwaivable Disqualifications) stated persons so discharged under the provisions of chapter 13, AR 635-200 incurred a nonwaivable disqualification.

b. Appendix D (Reenlistment Eligibility (RE) Codes for Reenlistment in the Regular Army) showed the following:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for immediate reenlistment unless waiver consideration is permissible and is granted
- RE-4 – Not eligible for reenlistment; nonwaivable disqualification

4. AR 635-5-1 (SPD), in effect at the time, stated Soldiers separated per chapter 13, paragraph 13-5a (1), AR 635-200, received an SPD of "JKA." The associated reason for

separation was, " Frequent Incidents of a Discreditable Nature with Civil or Military Authorities."

5. AR 15-185 (ABCMR), currently in effect, states:

a. The ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, 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).

b. 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.

6. 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.

//NOTHING FOLLOWS//