

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 March 2024

DOCKET NUMBER: AR20230006084

APPLICANT REQUESTS: in effect, 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)
- Self-Authored Statement
- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Report of Separation from Active Duty), for the period ending 2 April 1979
- National Personnel Records Center (NPRC) Letter, Request for Separation Documents, dated 1 October 2019
- Michigan Department of Treasury (Income Tax Return)

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 information on his record is false and incorrect. He was recently made aware of the information on his military record, which is misleading and not true.
3. Through a separate, self-authored statement the applicant states:
 - a. Concerning the violation on 17 May 1978: he was on a weekend pass, and he remained in the barracks and was at formation the following morning. The violation on 16 February 1978, he has no idea how marijuana ended up in his possession. He knew other Soldiers in the barracks that had drugs and other paraphernalia. He does not doubt whether it was planted on him. The violation on 12 June 1978, he was on a weekend pass and was offered a ride home and unfortunately, he was dropped off 219 miles from where he needed to be. He had no intention in going absent without leave

(AWOL). He had to find somewhere to stay until he was able to contact his mom to send him money or a ticket to go home.

b. He went through great lengths to find somewhere to live. He did not have money as a private and befriended a faculty member from Jackson State University who wanted to help him due to his situation. At this point 15 days had passed, and he did not know what to do other than try and go home. He finally arrived home, and his mother was happy to see him but had no idea what he needed to do regarding the military and him being AWOL.

c. He was apprehended by civilian authorities and returned to the control of the military. He did receive an honorable discharge from the Army National Guard (ARNG), but it was taken back. The drill sergeant offered the Soldiers an opportunity to leave the military and each time he raised his hand but was ignored and others were released. He had all intentions to stay and complete his time. The military has given a false account of what really happened. He just wants to have his record corrected.

4. The applicant provides:

a. A letter from NPRC, dated 1 October 2019, wherein he requested copies of his separation documents.

b. A letter from Michigan Department of Treasury, dated 2 March 2022, detailing his homestead property tax credit and/or home heating credit claim.

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

a. Having prior service in the MIARNG from 23 August 1977 to 28 September 1977, the applicant enlisted in the Regular Army on 4 October 1977.

b. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on/for:

(1) 16 February 1978; for wrongfully having in his possession 1 gram more or less of marijuana, on or about 15 February 1978.

(2) 17 May 1978; for without authority, on or about 0730 hours, 1 May 1978 absent himself from his appointed place of duty, and did remain so absent until on or about 0800 hours, 2 May 1978.

c. On 13 June 1978, the applicant's commander initiated a personnel action which shows his duty status changed from present for duty (PDY) to AWOL with an effective date of 12 June 1978.

d. On 11 July 1978, the applicant's commander initiated a personnel action which shows his duty status changed from AWOL to dropped from rolls (DFR).

e. On 20 February 1979, the applicant's commander initiated a personnel action which shows his duty status changed from DFR to returned (attached) to military control with an effective date of 1 February 1979.

f. The applicant signed an admission of AWOL on 28 February 1979, wherein he knowingly, willingly, and voluntarily declared he was AWOL from 12 June 1978 to 1 February 1979.

g. On 27 February 1979, charges were preferred on the applicant. His DD Form 458 (Charge Sheet) shows he was charged with one specification of AWOL from 12 June 1978 to 1 February 1979.

h. On 28 February 1979, the applicant, through counsel, submitted a request for discharge for the good of the service under the provisions of Chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He understood:

- he may request discharge for the good of the service because charges have been preferred against him under the UCMJ, which authorize the imposition of a bad conduct or dishonorable discharge
- he was making the request of his own free will and had not been subjected to any coercion whatsoever by any person
- he was advised of the implications that are attached to it
- by submitting the request for discharge, he acknowledges that he is guilty of the charge against him or of a lesser included offense
- under no circumstances did he desire further rehabilitation, for he had no further desire to perform military service
- he had the opportunity to consult with appointed counsel for consultation
- if his request for discharge was accepted, he may be discharged under other than honorable conditions
- he would be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered by the Veteran's Administration and that he may be deprived of his rights and benefits as a veteran under both Federal and State law

i. He elected to submit a personal statement on his own behalf in which he states he was in his second year of college and living with his brother, a disagreement between them occurred, and he was kicked out. He joined the military but regretted it since his mother was a single parent. His mom took care of his sister who was pregnant for the second time with no income. His mom was barely making minimum wage at the time and his brother had a family of his own and could not help. He tried to get out the Army

since the beginning, he did not like it. His mother wrote in to try to get him home, but it was ignored. He really wanted to get out the Army and be home with his mother to help her and not have her worry about him.

j. On 9 March 1979, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, Chapter 10. The applicant would be furnished a discharge under other than honorable conditions and be reduced to private/E-1 prior to discharge.

k. On 2 April 1979, he was discharged accordingly. His DD Form 214 shows he was discharged in accordance with chapter 10 of AR 635-200 with an under other than honorable conditions characterization of service with Separation Code JFS and Reentry Codes 3/3B). He completed 10 months and 9 days of active service with 234 days lost from 12 June 1978 to 31 January 1979.

6. His record contains a letter from the Army Discharge Review Board (ADRB), dated 10 March 1982, which shows after careful consideration of his military records and all other available evidence, the ADRB determined that he was properly discharged. His request for a change in the type and nature of discharge was denied.

7. By regulation (AR 635-200), a Soldier who has committed an offense or offenses, the punishment for which, under the UCMJ, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.

8. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

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 DoD 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 charged with commission of an offense punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination.

Based on a preponderance of evidence, the Board determined that 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 for correction of the records of the individual concerned.

█

█ █

█

█

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, prescribes the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Paragraph 3-7b (General Discharge) states 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.

c. Chapter 10 (Discharge in Lieu of Trial by Court-Martial) states a Soldier who has committed an offense or offense, the punishment for which, under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate if such is merited by the Soldier's overall record during the current enlistment.

3. 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/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 based on 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//