

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 January 2024

DOCKET NUMBER: AR20230006388

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to honorable.

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 went absent without leave (AWOL), got married, and had his first child. He was on disability before getting his retirement.
3. The applicant enlisted in the Regular Army on 29 January 1974, for 3 years. Upon the completion of initial entry training, he was awarded military occupational specialty 61D (Amphibian Operator). The highest rank he attained was private first class/E-3.
4. A DA Form 3836 (Notice of Return of US Army Member from Unauthorized Absence) shows the applicant was dropped from the rolls (DFR) on 5 October 1974.
5. A DA Form 4187 (Personnel Action) shows the applicant was apprehended by civil authorities in Adrian, MI, on 29 April 1976. He was transported to Fort Carson, CO. His duty status changed from DFR to present for duty on 6 May 1976, pending disposition of military charges.
6. The applicant provided a personal statement on 9 May 1976, wherein he stated, in effect, there was nothing the Army could have done to prevent him from going AWOL. He did not wish to remain in the service as he had too much going for him in civilian life.
7. On 10 May 1976, the applicant was advised by counsel of the basis for the contemplated separation action against him under the provisions of Army Regulation

(AR) 635-200 (Personnel Separations – Enlisted Personnel), by reason of misconduct. After being advised of his rights, he waived a personal appearance and consideration of his case before a board of officers and representation by counsel. He acknowledged understanding that if issued a UOTHC discharge he may be ineligible for many or all benefits as a Veteran and under both Federal and State laws, and he may encounter prejudice in his civilian life. A statement in his own behalf would be forthcoming.

8. The applicant's immediate commander notified the applicant on 13 May 1976 of his intent to initiate separation action against him under the provisions of AR 635-200, paragraph 15-6 (Misconduct- Desertion and AWOL).

9. On the same date, he provided a statement acknowledging his two periods of AWOL, his understanding of the implications of an undesirable discharge, and his willingness to accept an undesirable discharge under the provisions of AR 635-200, Chapter 15.

10. Subsequently, the applicant's immediate commander formally recommended separation under the provisions of AR 635-200, Chapter 15, by reason of misconduct - AWOL or desertion which continued for one year or more. On 17 May 1976, the applicant's intermediate commander recommended approval of the separation action.

11. The separation authority approved the recommended separation on 21 May 1967 and further directed the issuance of an Undesirable Discharge Certificate and reduction to the lowest enlisted grade.

12. The applicant was discharged on 7 June 1976 under the provisions of AR 635-200, Chapter 15, Section II, by reason of misconduct – desertion, in the rank/grade of private/E-1. His DD Form 214 (Report of Separation from Active Duty) confirms his character of service was UOTHC with separation program designator "JFK" and reenlistment code "RE-4". He was credited with 6 months and 11 days of net active service with 668 days of time lost.

13. Under AR 635-200, Chapter 15, in effect at the time, an individual was considered for discharge when it was determined by an administrative review that there was substantial evidence to support a determination of desertion or AWOL, continuous for 1 year or longer, and retention in the service was precluded by regulations, was not considered desirable, or in the best interests of the United States, and trial by court-martial on a charge of desertion or AWOL was waived or deemed inadvisable.

14. The Board should consider the applicant's overall 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 evidence shows the applicant was discharged due to misconduct – desertion with a character of service was under other than honorable conditions and that he completed 6 months and 11 days of active service with 668 days of time lost. The Board found no error or injustice in his separation processing. 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.

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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 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that 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 15 established policy and prescribed procedures for the elimination of enlisted personnel for misconduct by reason of AWOL or desertion. It states, when absentees were returned to military control from a status of AWOL or desertion, the commander exercising general court-martial jurisdiction was authorized to direct discharge, retention, convene an administrative discharge board, and approve the discharge but suspend execution. An individual may be considered for discharge under this section when the unauthorized absence was continuous for 1 year or longer and retention in the service was precluded by regulations or not considered desirable or in the best interest of the U.S. An individual discharged under the provisions of this section will be furnished an Undesirable Discharge Certificate.

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/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 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. 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, 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//