

IN THE CASE OF: ██████████

BOARD DATE: 25 January 2024

DOCKET NUMBER: AR20230006444

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service to under honorable conditions (general) and an appearance before the Board via video or telephone

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

DD Form 149 (Application for Correction of Military Record) with self-authored statement

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, his first duty assignment was in South Korea which he liked. His trouble started at his next assignment at Fort Belvoir, VA. He ran into some people who were trouble and had several confrontations. These people were well established in the company; one was a good friend of the commander. The applicant was young and on his own. The confrontations continued, so he left, never to return. He was put in the stockade for six months and given an undesirable discharge. He was glad to be out. He does not blame the Army or anyone else. He is responsible for his own life. If he could do it again, he would handle things differently. He is an outstanding citizen who sets an example through his hard work.
3. The applicant enlisted in the Regular Army on 20 February 1962 for a 3-year period. The highest rank he attained was private first class/E-3.
4. Before a summary court-martial on or about 3 April 1964, at Columbus, OH, the applicant was found guilty of absenting himself from his unit without proper authority (AWOL), from on or about 2 March 1964 until on or about 31 March 1964. The court sentenced him to reduction to private/E-1 and confinement at hard labor for 30 days.

5. Before a special court-martial at Fort Leonard Wood, MO, on 21 July 1964, the applicant pled guilty to and was found guilty of being AWOL from on or about 14 May 1964 until on or about 18 June 1964. The court sentenced him to reduction to E-1, forfeiture of \$60.00 pay per month for six months, and confinement at hard labor for six months. The sentence was approved and ordered duly executed on 22 July 1964.

6. A memorandum from the Office of the Confinement Officer, Fort Leonard Wood, MO, dated 6 August 1964, shows the applicant appeared before the Post Stockade Evaluation Board for the purpose of being classified restorable or non-restorable. Upon evaluation, the applicant stated he stayed AWOL from leave because he did not like his duty assignment, and he had no desire to return to duty. He would only go AWOL again. His record of repeat offenses indicated that further restoration and rehabilitation efforts would be ineffective. The Board determined the applicant was non-restorable, and he would not be prepared for a successful return to duty.

7. A Mental Hygiene Consultation Service letter shows the applicant was examined on 14 August 1964 and had no disqualifying mental defects sufficient to warrant disposition through medical channels. He was determined to be mentally responsible to distinguish right from wrong and had the mental capacity to understand and participate in board proceedings.

8. The applicant underwent a medical examination on 14 September 1964. The relevant Standard Form (SF) 88 (Report of Medical Examination) shows the examining provider deemed the applicant physically qualified for discharge.

9. The applicant's commander recommended his discharge under the provisions of Army Regulation 635-208 (Personnel Separations-Discharge-Unsuitability), by reason of unfitness, on 24 September 1964. The commander noted the applicant's repeated acts of misconduct, unwillingness to fulfill his obligations, and continued shirking of his military responsibilities as reasons for the recommended discharge.

10. On that same date, the applicant consulted with counsel. He was advised of the basis for the recommended separation action under the provisions of Army Regulation 635-208, by reason of unfitness. He waived his right to a hearing before a board of officers and did not elect to submit a statement in his own behalf. He acknowledged understanding that if an undesirable discharge was issued to him that he may be deprived of many or all rights as a Veteran under both Federal and state laws and that he may expect to encounter substantial prejudice in civilian life.

11. The applicant's chain of command recommended approval of his discharge and further recommended the issuance of a DD Form 258A (Undesirable Discharge Certificate).

12. The separation authority approved the recommended discharge on 6 October 1964 and directed the issuance of an undesirable discharge.

13. Special Court-Martial Order Number 763, issued by U.S. Army Garrison, Fort Leonard Wood, MO, dated 9 October 1964, shows the unexecuted portion of the applicant's sentence to confinement at hard labor was remitted, effective 13 October 1964.

14. The applicant was discharged on 13 October 1964 under the provisions of Army Regulation 635-208, by reason of unfitness. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) confirms his characterization of service was UOHTC with separation program number 386 (an established pattern of shirking). He was credited with 2 years, 1 month, and 26 days of net service this period with 181 days of lost time.

15. Per regulatory guidance, enlisted Soldiers would be discharged by reason of unfitness with an undesirable discharge, unless the particular circumstances in a given case warranted a general or honorable discharge.

16. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance. Applicants do not have a right to a hearing before the ABCMR.

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.

4/24/2024

X 

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, 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 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 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 (Personnel Separations – Enlisted Personnel), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. Paragraph 1-9d provided that an honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 1-9e provided that a general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

4. Army Regulation 635-208, in effect at the time, set forth the policy for administrative separation for unfitness. Paragraph 3 provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: (a) frequent incidents of a discreditable nature with civil or military authorities, (b) sexual perversion, (c) drug addiction, (d) an established pattern of shirking, and/or (e) an established pattern showing dishonorable failure to pay just debts. This regulation prescribed that an undesirable discharge was normally issued unless the particular circumstances warranted a general or honorable discharge.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Service 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.

//NOTHING FOLLOWS//