

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2024

DOCKET NUMBER: AR20230006465

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- a video/telephonic appearance before the Board

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 he wants his discharge corrected to an honorable discharge; he served all his time. He is homeless and needs help and hopes to get his benefits. He appreciates the consideration in reviewing his case.
3. A review of the applicant's service records show:
 - a. He enlisted in the Regular Army on 16 September 1964.
 - b. His DA Form 2-1 (Personnel Qualification Record – Part II) shows in:
 - item 5 (Oversea Service): Germany from 1 February 1965 to 4 February 1967
 - item 18 (Appointments and Reductions):
 - private (PVT)/E-1: 16 September 1964
 - private (PV2)/E-2: 16 January 1965
 - private first class (PFC)/E-3: 16 May 1965
 - PVT/E-2: 12 October 1965
 - PVT/E-1: 13 January 1966

- PVT/E-2: 13 April 1966
- PVT/E-1: 25 September 1967

c. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on 12 October 1965, for without proper authority, absenting himself from his unit, on or about 1 October 1965 and did remain so absent until on or about 3 October 1965. His punishment included reduction to PV2/E-2, restriction, and extra duty for 14 days.

d. Special Court-Martial Order Number 1, dated 13 January 1966 found the applicant guilty of the following charges:

- one specification of being absent from his unit, on or about 2100 hours on 29 October 1965 and did remain so absent until on or about 30 October 1965
- one specification of on or about 29 October 1965, wrongfully appropriate a motor vehicle, a ¼ ton truck, the property of the United States government
- one specification of breaking restriction.

e. The sentence was adjudged on 16 December 1965 of confinement at hard labor for 2 months, forfeiture of \$62.00 pay per month for 2 months, and to be reduced to the grade of PVT/E-1.

f. On 13 January 1966, the convening authority approved the sentence of the court-martial and only so much of the sentence as provides for confinement at hard labor for 2 months, forfeiture of \$35.00 pay per month for 2 months, and reduction to the grade of PVT/E-1 is approved and will be duly executed, but the execution of that portion thereof adjudging confinement at hard labor for 2 months is suspended for 3 months, at which time, unless the suspension is sooner vacated, the suspended portion of the sentence will be remitted without further action.

g. Special Court-Martial Order Number 9, issued by Headquarters, 3rd Armored Cavalry Regiment, on 28 February 1966, vacated the suspension of the sentence to confinement at hard labor for 2 months. The unexecuted portion of the sentence to confinement at hard labor for 2 months will be duly executed.

h. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ, on two separate occasions for the following misconduct:

(1) On 11 May 1966 for without proper authority, on or about 9 May 1966 absent himself from his unit, and did remain absent until on or about 10 May 1966.

(2) On 11 December 1966 for without proper authority, on or about 8 December 1966 absent himself from his unit, and did remain absent until on or about 8 December 1966.

i. Special Court-Martial Order Number 248, dated 25 September 1967 found the applicant guilty of three specifications of AWOL for the following periods:

- 15 June 1967 to 27 June 1967
- 22 July 1967 to 4 August 1967
- 5 August 1967 to 17 August 1967

j. The sentence was adjudged on 19 September 1967 of confinement at hard labor for 6 months and forfeiture of \$37.00 pay per month for 6 months.

k. On 25 September 1967, the convening authority approved the sentence of the court-martial and only so much of the sentence as provides for confinement at hard labor for 4 months and forfeiture of \$37.00 pay per month for 6 months, is approved and will be duly executed.

l. Special Court-Martial Order Number 324, dated 20 November 1967 suspended the unexecuted portion of the sentence to be confined at hard labor for 6 months until 18 March 1968, at which time unless the suspension is sooner vacated, the suspended portion of the sentence will be remitted without further action.

m. On 17 May 1977, the applicant's commander initiated a personnel action which shows his duty status changed from dropped from unit rolls (DFR) to confined by civilian authorities with an effective date of 3 February 1977.

n. On 15 June 1977, the applicant's commander initiated a personnel action which shows his duty status changed from confined by civilian authorities to AWOL with an effective date of 20 May 1977. The applicant was discharged from the Federal Reformatory, El Reno, OK on 20 May 1977.

o. On 15 June 1977, the applicant's commander initiated a personnel action which shows his duty status changed from AWOL to DFR with an effective date of 21 May 1977.

p. On 31 August 1977, the immediate commander notified the applicant of his intent to separate him from service under the provisions of Chapter 15, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel).

q. The applicant, through counsel, on 31 August 1977 was advised of the details of the DOD Discharge Review Program (Special) and of his eligibility to participate. He also had been advised by his counsel that he had been recommended for discharge by

reason of desertion or AWOL under the provisions of Chapter 15, AR 635-200. He understood that his rights included:

- consideration of his case by an Administrative Discharge Board
- personal appearance before that board
- representation, free of charge, by military counsel or representation by civilian counsel of his choice at no expense to the government
- he understood that should he request consideration of his case by an Administrative Discharge Board the Board may: recommend retention on active duty, should he request retention; recommend Honorable Discharge or General Discharge Under Honorable Conditions; recommend Discharge Under Other Than Honorable Conditions
- the possible effects of discharge Under Other Than Honorable Conditions and that, as a result of the issuance of such a discharge
- he may be deprived of many, or all benefits administered by the Veterans Administration and that he may be deprived of his rights and benefits as a veteran under both Federal and State law
- he may encounter substantial prejudice in civilian life by reason of a Discharge Under Other Than Honorable Conditions
- he waived consideration of his case by an Administrative Discharge Board
- he waived representation by counsel
- he understood that he may up until the date the discharge authority orders direct, or approve his discharge, withdraw this waiver and request an Administrative Discharge Board hear his case

r. He elected not to submit a personal statement on his own behalf.

s. On 31 August 1977, consistent with the chain of command recommendations, the separation authority approved the applicant's discharge under the provisions of AR 635-200, Chapter 15. The applicant would be issued an under other than honorable conditions discharge and be reduced to the lowest enlisted grade prior to separation.

t. On 31 August 1977, he was discharged accordingly. His DD Form 214 (Report of Separation from Active Duty) shows he completed 2 years, 9 months, and 3 days of active service with 81 days of lost time between 1 October 1965 and 4 August 1967. His DD Form 214 also shows he received an under other than honorable conditions characterization of service and was issued a DD Form 794A.

4. His record contains a letter from the Army Discharge Review Board (ADRB), dated 4 June 1978, 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.

5. By regulation (AR 635-200), an individual may be considered for discharge when it is determined by an administrative review of all facts that there is substantial evidence to support a determination of desertion or absence without leave.

6. 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:

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:

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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 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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribes the basic authority for the separation of enlisted personnel.
 - a. Paragraph 1-9d (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 1-9e (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 15 (Misconduct – Desertion and Absence Without Leave) states an individual may be considered for discharge under this chapter when it is determined by an administrative review of all facts that there is substantial evidence to support a determination of desertion or absence without leave.

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.

4. Army Regulation 15-185 (ABCMR), paragraph 2-11, states applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//