

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 February 2024

DOCKET NUMBER: AR20230006989

APPLICANT REQUESTS: his under honorable conditions (general) discharge be upgraded to honorable. Additionally, he requests a personal or video/telephone appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- DD Form 214 (Report of Separation from Active Duty)
- Photos (two)
- Identification Cards
- Social Security Card
- Certificates of completion, appreciation, and service

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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:

a. He was a good Soldier, not excellent, but good. He was only 60 days from his expiration term of service date when he was discharged. Earlier his superiors had informed him he was not suitable for the Army anymore. Errors were on his DD Form 214 for lost time. He never knew he could have his discharge reviewed.

b. In his letter he states, he gets Veteran Administration benefits. He was 18 years old, and his captain was passing out bad discharges in the company. He tried to give the applicant one, but he took it to a review board, and they decided he didn't deserve a bad conduct discharge. The trouble he got into was that he did not show up to pull his guard duty on two separate occasions. He paid other Soldiers to pull his guard duty so he could go home for the weekend. They never showed up for his guard duty and he

was considered absent without leave (AWOL). He should have pulled his own guard duty. He did not make the best decisions at the time. He never got into trouble obeying orders or was ever considered any kind of a troublemaker.

c. In his post service life, he got married and had 4 children. He used his GI Bill and became a state certified inspection mechanic. He owned his own automotive shop in Oklahoma and is very well respected anywhere he has ever lived or worked. He is an American Legion Member. He has no criminal record of any kind (never been arrested). He is a licensed conceal carry gun permit holder. He doesn't even have a traffic citation of any kind over the last 40 years. He was close to fulfilling his obligation. He is almost 70 years old and would like to go to his grave with an honorable discharge. He made a mistake but respecting the military was never a problem with him.

3. The applicant enlisted in the Regular Army on 2 August 1972 for three years. His military occupational specialty was 64C (Motor Transport Operator).

4. The Record of Counseling shows the applicant was counseled on various occasions between 13 December 1972 and 29 January 1975 for: AWOL (twice), failure to perform his duties, unsatisfactory appearance, inability to produce useful work, substandard appearance, negative attitude, refusal to perform useful labor, substandard performance and was considered for discharge (5 April 1973), refused a lawful order, twice disobeyed direct orders, and disrespect.

5. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on:

- 27 March 1973 for AWOL from on or about 2 March 1973 to on or about 6 March 1973; his punishment consisted of forfeiture of \$30.00 per month for one month, and extra duty,
- 4 April 1973 for without authority, failure to go at the time prescribed to his place of duty on or about 22 March 1973, on or about 24 March 1973, on or about 29 March 1973; and AWOL on or about 30 March 1973 until on or about 3 April 1973; his punishment consisted of forfeiture of \$50.00 per month for one month and extra duty
- 12 April 1973 for operating a vehicle in a reckless manner on or about 11 April 1973; his punishment consisted of forfeiture of \$10.00 per month for one month
- 17 April 1973 for failing to register his vehicle on post but continued to operate it on or about 7 April 1973 and failing to obey a direct order from Captain [REDACTED]; his punishment consisted of forfeiture of \$20.00 per month for one month
- 16 July 1973 for without authority, failing to go at the time prescribed to his appointed place of duty on or about 15 July 1973; his punishment consisted of forfeiture of \$20.00 per month for one month, and restriction

- 17 September 1974 for AWOL from on or about 16 September 1974 until on or about 17 September 1974; his punishment consisted of reduction to private first class/E-3, extra duty, and forfeiture of \$60.00 for one month
6. Memorandum, dated 15 October 1974 shows the applicant was arrested by civil authorities. Assistant Adjutant letter, dated 8 November 1974, shows the records reflected the applicant was released on bond on 9 September 1974, returned to court on 20 September 1974, paid a fine and returned to military control.
7. The applicant was AWOL on 15 November 1974 and present for duty on 21 November 1974.
8. The applicant accepted NJP under Article 15 of the UCMJ on 6 February 1975 for willfully failing to obey an order to remove automotive parts from his wall locker on or about 27 January 1975. His punishment consisted of forfeiture of \$75.00 pay for one month and extra duty.
9. The Bar to Reenlistment Certificate, dated 5 February 1975, shows the applicant's commander opined that the applicant had been counselled formally and informally on several occasions in regard to his apathetic attitude, lack of initiative, lack of military bearing, inability to adapt to a military environment, and his overall substandard performance of duty. In view of these deficiencies, he was entirely unsuitable for reenlistment. A bar to reenlistment was approved on 26 February 1975.
10. A Statement of Medical Condition shows there had been no change in his medical condition since his last separation examination on 4 February 1975.
11. The applicant's immediate commander on 20 February 1975 recommended his separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), paragraph 13-5a, for unfitness. He recommended the separation because of the applicant's consistent record of substandard performance. His disregard for military authority as well as his lack of respect for that authority. He had a record of habitual shirking of responsibility as well as his inability to adjust to a military environment.
12. The Report of Mental Status Evaluation, dated 24 February 1975, shows the applicant did not have significant mental illness, was mentally responsible, able to distinguish right from wrong, able to adhere to the right, had the mental capacity to understand and participate in board proceedings, and met retention standards.
13. The applicant consulted with legal counsel on 14 March 1975 and was advised of the basis for the contemplated action to accomplish his separation under the provisions of AR 635-200, Chapter 13, for unfitness, the rights available to him, and the effect of

action taken by him. The applicant requested consideration of his case by a board of officer and requested a personal appearance before a board of officers.

a. He requested representation by counsel. He understood that he may expect to encounter substantial prejudice in civilian life if a under honorable conditions, general discharge was issued to him.

b. He elected not to submit statements in his own behalf.

14. On 18 March 1975, the applicant's immediate commander formally recommended his separation under the provisions of AR 635-200, paragraph 13, for unfitness and advised him of the rights available to him. His chain of command recommended approval. His commander was convinced the applicant should have been eliminated from the military service in 1973. Instead of this having been done, he was allowed to linger in the unit and compile an impressive history of disciplinary offenses. He is an immature, misguided young man, totally unfit for the military service. Rapid elimination is called for.

15. Counseling and rehabilitation requirements were waived on 16 April 1975. A board of officers would convene.

16. The Board of Officers convened on 6 May 1975, and determined the applicant displayed a definite pattern of shirking which was of such duration and magnitude to warrant a discharge under the provisions of AR 635-200, Chapter 13 and recommended the applicant be separated from the service because of unfitness and furnished a general discharge.

17. The separation authority approved the separation on 19 May 1975, under the provisions of AR 635-200, paragraph 13-5a for unfitness. He directed that the applicant be issued a General Discharge Certificate.

18. The applicant was discharged on 2 June 1975. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 13-5a(4). He was assigned Separation Program Designator JLJ [shirking] with Reenlistment Code 3B and 3. His service was characterized as under honorable conditions (general). He completed 2 years, 9 months, and 8 days of net active service. He lost time from 6 December 1972 through 13 December 1972, 2 March 1973 through 5 March 1973, 30 March 1973 through 2 April 1973, 16 September 1974 through 16 September 1974, and 15 November 1974 through 20 November 1974.

19. Regulatory guidance provides for separation due to unfitness under the provisions of paragraph 13-5a (4), it provides that action will be taken to separate a member for unfitness and an established pattern for shirking.

20. The applicant provides a copy of his DD Form 214, photos, ID cards and certificates related to his employment, appreciation, and training.

21. Regarding time lost on his DD Form 214, AR 635-5 (Separation Documents), states, the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

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

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board noted, the applicant's post service and his community involvement over the past 40 years.

2. The Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 2 years, 9 months, and 8 days of net active service. The Board noted the applicant was discharged and provided an under honorable conditions (General) characterization of service. The Board determined the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an honorable discharge. Based on this, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

2/22/2024

X █

CHAIRPERSON

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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, USC, 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. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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. 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 13. This chapter establishes policy and provides procedures and guidance for eliminating enlisted personnel found to be unfit or unsuitable for further military service. Action will be taken to separate an individual for unfitness when it is clearly established that: (1) Despite attempts to rehabilitate or develop him as a satisfactory soldier, further effort is unlikely to succeed; or (2) Rehabilitation is impracticable, or he is not amenable to rehabilitation measures (as indicated by the medical and/or personal history record). Chapter 13-5a (4) provides that action will be taken to separate a member for unfitness and an established pattern for shirking.

4. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018, 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 grounds.

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//