

IN THE CASE OF: ██████████

BOARD DATE: 14 February 2024

DOCKET NUMBER: AR20230008251

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions characterization of service and correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show a different separation program number (SPN), presumably more favorable.

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

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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, in effect, he was assigned temporary duty (TDY) to another command. A noncommissioned officer (NCO) called him out to the field to participate in a drill. A lieutenant stopped and told him he was TDY; he should not be out there. He went to a scheduled track meet and returned to the barracks. An NCO told him to go to the Motor Pool. He did not go because he was TDY. Several days later, he was informed he was receiving an Article 15. He requested a court-martial, as he did not believe an Article 15 was justified. At the court-martial, he was given an UOTHC discharge. The Judge Advocate General (JAG) officer did a poor job, and no one else defended him.
3. The applicant enlisted in the Regular Army on 23 September 1963 for a 3-year period. The highest rank he attained was private first class/E-3.
4. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on three occasions for the following violations:

a. On 25 March 1964, for willfully disobeying a lawful order from his superior NCO, to go to the motor pool and perform maintenance, on or about 20 March 1964. His punishment consisted of an oral reprimand, 14 days of extra duty, and 14 days of restriction.

b. On 2 April 1964, for failure to report for extra duty, breaking restriction imposed by Article 15, on or about 31 March 1964. His punishment consisted of forfeiture of \$40.00 pay, 30 days of extra duty, and 30 days of restriction.

c. On 7 July 1964, for failure to go at the time prescribed to his appointed place of duty, on or about 3 July 1964. His punishment consisted of an oral reprimand, 14 days of extra duty, and 14 days of restriction.

5. Before a special court-martial at Fort Hood, TX, on 26 August 1964, the applicant was found guilty of being disrespectful in language to his superior NCO and wrongfully appearing at his place of duty without the proper rank and insignia on his uniform. The court sentenced him to reduction to private/E-1 and forfeiture of \$55.00 pay per month for six months. Only so much of the sentence that provided for reduction to private/E-1 and forfeiture of \$55.00 pay per month for three months was approved and ordered duly executed on 31 August 1964.

6. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on two additional occasions for the following violations:

a. On 4 November 1964, for failure to repair, on or about 3 November 1964. His punishment consisted of 14 days of extra duty and 14 days of restriction.

b. On 27 November 1964, for being absent without authority from guard mount, on or about 22 November 1964. His punishment consisted of forfeiture of \$41.00 pay per month for two months, 30 days of extra duty, and 45 days of restriction.

7. Court-martial charges were preferred against the applicant on 7 January 1965, for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows he was charged with failure to go at the time prescribed to his appointed place of duty and for breaking restriction, on or about 2 January 1965.

8. Before a summary court-martial on 11 January 1965, the applicant was found guilty of the charges above. He was sentenced to confinement at hard labor for one month. The sentence was approved and ordered executed on 12 January 1965.

9. The applicant's service record is void of the complete facts and circumstances surrounding his discharge processing. However, the applicant was discharged on

22 January 1965 under the provisions of Army Regulation 635-208 (Personnel Separations – Discharge – Unfitness), by reason of unfitness. His DD Form 214 confirms his characterization of service was UOTHC with SPN 386 (an established pattern of shirking). He was credited with 1 year, 3 months, and 15 days of net service this period with 28 days of lost time.

10. 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. Regulatory guidance provides when an individual is discharged under the provisions of Army Regulation 635-208, for unfitness, by reason of established patterns of shirking, the appropriate SPN is 386.

11. The Board should consider the applicant's overall military service and statement in accordance with the published equity, injustice, or clemency determination 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 of multiple infractions. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination.

2. The Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 1 year 3 months and 15 days of net service for this period. Based on a preponderance of evidence, the Board determined there was insufficient evidence of an error or injustice which would warrant an upgrade to the character of service the applicant received upon separation or a change in the separation code. Therefore, the Board denied relief.

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.

3/29/2024

X [Redacted Signature]

CHAIRPERSON

[Redacted Name]

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. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and decides cases

based on the evidence presented in the military records provided and the independent evidence submitted with the application.

3. Army Regulation 635-5 (Personnel Separations – Separation Documents), Appendix I (SPN and Authority Governing Separations) provides the specific authorities, reasons for separating Soldiers from active duty, and the appropriate SPN to be entered on the DD Form 214. This regulation identifies the following separation program numbers and narrative reasons for Soldiers separated under the authority of AR 635-208:

- SPN 28B – frequent incidents of discreditable nature with civil or military authorities
- SPN 388 - sexual perversion
- SPN 384 - drug addiction of the unauthorized use or possession of habit forming narcotic drugs of marijuana
- SPN 386 - an established pattern of shirking
- SPN 28F - an established pattern for showing dishonorable failure to pay just debts

4. 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.

5. 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.

6. 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 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//