

IN THE CASE OF: ██████████

BOARD DATE: 21 March 2024

DOCKET NUMBER: AR20230008484

APPLICANT REQUESTS: Upgrade of his under honorable conditions (general) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Legal brief on behalf of the applicant
- Affidavit in support
- In-service personnel records
- Character reference letter

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. Counsel states, in pertinent part:

a. In August 1970, a time when many sought to avoid military service, the applicant enlisted in the Army hoping to serve his country. He completed his required training and was assigned to Fort Knox, KY. He served honorably while on active duty. He saw the military as a family saw himself potentially staying in the Army as a career. He even volunteered to deploy to Vietnam but did not get the opportunity because of a preexisting hearing problem. The applicant was released to the U.S. Army Reserve (USAR). For the next two years, he served satisfactorily, and he had a good relationship with his commanding officer (CO).

b. In 1972 or 1973, the applicant's unit got a new CO. He had an extremely poor relationship with him. The applicant feels his CO treated him "like a kicking post." His CO would occasionally assign him tedious tasks "as a punishment" even when he had done nothing wrong. In 1973, the CO reduced his rank. He feels this was done because of his CO's animus toward him, not because of unsatisfactory performance.

c. 1974 was a difficult year for the applicant. His wife was pregnant with their first child. The day before Annual Training (AT), the applicant's wife began to experience false labor. He drove her to the hospital. Once he knew his wife was going to be okay, he left the hospital and drove overnight to Fort Drum, N.Y. Unfortunately, he arrived about one to two hours late. Nevertheless, he still participated in AT. Despite his participation, he was not credited for his attendance and was subject to involuntary recall to active duty.

d. The applicant was involuntarily placed on active duty. He was ordered to report to Fort Dix, NJ. Only a short time after reporting to Fort Dix, he received a call from his wife stating there were some health problems with their newborn son and that she needed him to immediately come home to Vermont. His wife was from Canada and had no family support system in Vermont. She was all alone with a sick newborn son. The applicant requested emergency leave but was denied. He felt he needed to be there for his family and was worried something bad was going to happen to them. Seeing no other way, the applicant went absent without leave (AWOL). He received an Article 15 and a forfeiture of pay. Later that week, he received a call from his wife. Again, worried about his family, he went AWOL a second time. Upon his return to Fort Dix, he was charged and began to go through a summary court martial. The applicant contacted his congressman who was able to get him discharged quickly. The Army recommended him to be discharged for "unsuitability". He elected to waive his rights to appeal and accept the discharge.

e. The applicant's discharge should be upgraded. He was wrongfully placed on active duty despite attending AT. Once on active duty, the applicant had to deal with a serious family situation, causing him to go AWOL twice. He received no support from the Army in dealing with his family situation. Instead, the Army labeled him as unmotivated and unwilling to fulfill his military obligations. This is an inaccurate depiction of his military service.

3. The applicant states, by sworn affidavit, that his discharge does not accurately depict his conduct in the service nor consider his family situation at the time. He further reiterates his discharge processing.

4. The applicant enlisted in the USAR on 22 August 1970, for 6 years. He entered initial active duty for training on 26 November 1970. He was issued a DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) for this period of honorable service. He completed 4 months and 16 days of net active service this period.

5. Unit Orders Number 11, issued by Headquarters Detachment, 344th Transportation Battalion (Motor Transport), General Delivery, Montpelier, VT on 18 March 1973, show the applicant was reduced in grade to E-3 by reason: inefficiency. The applicant's record

is void of documents with the specific facts and circumstances surrounding his reduction.

6. The applicant was absent from a scheduled unit training assembly (UTA) or multiple unit training assembly (MUTA) on 10 September 1973. He was informed that he accrued one unexcused absence which would be credited for the purpose of ordering him to active duty. He was informed that members who accrue in any one year period a total of five or more unexcused absences from scheduled training assemblies are subject to being reduced to grade E-2 and being ordered to active duty.
7. The applicant was absent from a scheduled UTA or MUTA on 28 May 1974.
8. On 2 June 1974, the applicant was reported as AWOL.
9. The applicant failed to report for AT on 25 June 1974.
10. By memorandum dated 28 June 1974, the applicant's commander requested active duty orders be issued on the applicant under the provisions of Army Regulation 135-91 (Reserve Components – Policies and Procedures Governing Satisfactory Participation). His commander noted the applicant was notified on 21 April 1974 of the dates of AT. The applicant telephoned an officer on 28 May 1974 and stated that he was not going to attend AT during the period of 2 - 15 June 1974 or that he would attend any inactive duty training assemblies, as he was too busy. Additionally, the applicant refused to sign official notification of AT and he had no cogent reason, or no emergency existed to preclude attendance of AT.
11. By memorandum dated 8 August 1974, the assistant adjutant general provided the applicant's commander a copy of a letter forwarded to the applicant informing him of his right to appeal his order to active duty.
12. On 11 September 1974, the applicant was involuntarily ordered to active duty at Fort Dix, NJ, with a 16 October 1974 report date.
13. By memorandum dated 23 September 1974, the applicant's commander noted that the applicant had not submitted an appeal to his involuntary order to active duty.
14. By memorandum dated 18 October 1974, the applicant requested 10 days delay enroute in conjunction with his permanent change of station orders. His reason for requiring the delay was because his wife was sick. The applicant's record is void of documents confirming if his request was granted.
15. On 28 October 1974, the applicant was reported as AWOL a second time, and remained absent until he returned to military authorities on 29 October 1974.

16. On 1 November 1974, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) for being AWOL from on or about 28 October 1974 until on or about 29 October 1974. His punishment included forfeiture of \$20.00 per month for one month.
17. On 4 November 1974, the applicant was reported as AWOL a third time, and remained absent until he returned to military authorities on 21 November 1974.
18. On 21 November 1974, the applicant accepted NJP under Article 15 of the UCMJ for being AWOL from on or about 4 November 1974 until on or about 21 November 1974. His punishment included forfeiture of \$75.00 per month for one month.
19. On 29 November 1974, the applicant was reported as AWOL a fourth time and remained absent until he returned to military authorities on 2 March 1975.
20. On 3 March 1975, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.
21. Court-martial charges were preferred against the applicant on 4 March 1975, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL from on or about 29 November 1974 through on or about 2 March 1975.
22. On 7 March 1975, the applicant underwent counseling. The examining Social Work/Psychology Specialist noted the applicant explained that he went AWOL because he was having some difficulties with his wife's health. Additionally, the applicant was presently apathetic and unmotivated. His attitude shows little likelihood of change through retraining, reclassification, or normal in-service counseling. He was recommended for administrative separation under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13, for unsuitability.
23. The applicant's commander notified the applicant on 28 March 1975, that he was initiating actions to separate him under the provisions of Army Regulation 635-200, Chapter 13, paragraph 13-5b, for unsuitability.
24. The applicant consulted with legal counsel on the same date, and affirmed he had been advised of the basis for the contemplated separation action. Following his consultation, he waived his right to personally appear before, and to have his case considered by a board of officers. He declined to submit a statement in his own behalf and waived his right to further representation by military counsel. He acknowledged he could expect to encounter substantial prejudice in civilian life, if given either a general discharge (under honorable conditions) or an undesirable discharge.

25. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 13 for unsuitability. As the specific reasons, his commander noted the applicant displayed evidence of a character or behavior disorder, and he had been AWOL twice for 110 days.

26. Consistent with the chain of command recommendations, the separation authority approved the recommended discharge on 28 March 1975, and directed the issuance of a DD Form 257A (General Discharge Certificate).

27. The applicant was discharged on 11 April 1975. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 13-5B(2), based on unsuitability. His service was characterized as under honorable conditions (general). He was assigned Separation Program Designator code JMB and Reenlistment Code 3B. He completed 2 months and 5 days of net active service this period with 111 days of lost time.

28. The applicant provides a character reference letter that attests to his hard work and how he is always looking for ways to learn new things and improve himself, to serve his customers better. This letter is provided in entirety for the Board's review within the supporting documents.

29. 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:

The Board carefully considered the applicant's request, supporting documents, 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.

6/27/2024

X [REDACTED]

CHAIRPERSON
[REDACTED]

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 135-91 defines Army National Guard of the United States and USAR service obligations. It prescribes policies and procedures governing the various types of service obligations and participation requirements. The version in effect defined satisfactory participation as:

a. Attendance at and completion of initial active duty for training (ADT), unless the member fails to attend or complete initial ADT for reasons that are not within his control.

b. Attendance at all scheduled UTAs as a member of a paid drill unit of the Army National Guard or Army Reserve, unless excused by proper authority as provided herein. A member present at a scheduled UTA will not receive credit for attendance thereat unless he is in the prescribed uniform, presents a neat and Soldierly appearance, and performs his assigned duties in a satisfactory manner as determined by the unit commander. When a member attends a UTA and does not receive credit therefor, he will be charged with an unexcused absence and the unit commander will follow the same procedures applicable when a member fails to attend a unit training assembly.

3. Army Regulation 635-200 sets forth the requirements for the administrative 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 provided procedures and guidance for eliminating 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 despite attempts to rehabilitate or develop him as a satisfactory Soldier, further effort is unlikely to succeed. Action will be taken to separate an individual for unsuitability when it is clearly established that it is unlikely that he will develop sufficiently to participate in further military training and/or become a satisfactory Soldier.

4. 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//