

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 April 2024

DOCKET NUMBER: AR20230009586

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) characterization of service 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)

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 received telephonic permission from his first sergeant (1SG) to remain home on leave for five extra days. He was not absent without leave (AWOL); he had an emergency. When he returned from leave, he found out the 1SG never informed his commander. He believes the 1SG was getting even with him for protecting two enlisted military police who stopped the 1SG on post for driving under the influence. The applicant currently has a military tag on his license plate. He is being asked to return it after 14 years. With an honorable characterization of service, he will be allowed to keep the military license plate.
3. The applicant enlisted in the Regular Army on 18 March 1971 for a 3-year period. Upon the completion of initial entry training, he was awarded military occupational specialty 73C (Pay Disbursement Specialist).
4. He served in Belgium, Europe from 4 June 1972 to 5 March 1973. He was honorably discharged on 18 December 1973 for the purpose of immediate reenlistment. He was credited with 2 years, 9 months, and 1 day of net active service this period.
5. The applicant reenlisted on 19 December 1973 for a 4-year period. The highest rank he attained was specialist five/E-5. His DA Form 20 (Enlisted Qualification Record) and DA Form 2-1 (Personnel Qualification Record – Part II) both show he was AWOL on or about 28 June 1974 until on or about 2 July 1974.

6. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on five occasions:

- On 1 July 1975, for absenting himself from his place of duty, on or about 30 June 1975. His punishment consisted of forfeiture of \$50.00 pay.
- On 13 May 1976, for failure to go at the time prescribed to his appointed place of duty, on or about 7 May 1976. His punishment consisted of forfeiture of \$100.00 pay and 14 days restriction.
- On 26 October 1976, for failure to go at the time prescribed to his appointed place of duty, on or about 14 October 1976. His punishment consisted of forfeiture of \$50.00 pay.
- On 15 July 1977, for three occasions of failure to go at the time prescribed to his appointed place of duty, on or about 1 July, 5 July, and 7 July 1977. His punishment consisted of 14 days of extra duty.
- On 26 August 1977, for failure to go at the time prescribed to his appointed place of duty, on or about 23 August 1977. His punishment consisted of a \$25.00 fine.

7. A DA Form 2498 (Disposition Form), dated 11 October 1977, shows the applicant's immediate commander recommended the applicant's service be characterized as under honorable conditions (general) upon his separation from service, due to numerous disciplinary problems.

8. The applicant was discharged on 23 December 1977, under the provisions of Army Regulation 635-200 (Personnel Separations), Chapter 2, by reason of completion of required active service. His DD Form 214 (Report of Separation from Active Duty) confirms his character of service was under honorable conditions (general), with separation code JBK and reenlistment code RE-3B. He was credited with 4 years of net active service this period, with 5 days of lost time from 28 June 1974 to 2 July 1974. He was awarded National Defense Service Medal and Good Conduct Medal.

9. Regulatory guidance, in effect at the time, states a general discharge is the separation from the Army, under honorable conditions, of an individual whose military record is not sufficiently meritorious to warrant an honorable discharge. When a member's service is characterized as general, the specific basis for such separation will be included in the individual's military personnel record.

10. The Board should consider the applicant's statement and provided evidence in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully

considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The applicant was separated due to completion of his required active service. His commander recommended a general discharge due to the applicant's numerous disciplinary problems. He completed 4 years of active service. The Board determined the applicant's current character of service be inequitable and unjust, given the type of administrative infractions he committed. As a result, the Board determined an upgrade to honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests is appropriate. The Board also determined that such upgrade did not change the reason for his separation, and there would be no change to the narrative reason for separation and/or corresponding codes.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 23 December 1977, showing Character of Service: Honorable.

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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. 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. Paragraph 2-11 states applicants do not have the right to a hearing before the ABCMR. The Director of the ABCMR may grant a formal hearing whenever justice requires.
3. Army Regulation 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. A member's service may be characterized as general by the commanding officer authorized to take such action or higher authority when the member is eligible for or is subject to separation.
4. 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) 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.

//NOTHING FOLLOWS//