

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 December 2024

DOCKET NUMBER: AR20230009674

APPLICANT REQUESTS: upgrade of his under other than honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application of the Review of Discharge from the Armed Forces of the United States)
- Medical Documents
- Social Security Card and Commercial Driver's License

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 he is asking the mercy of the committee. He had a stroke and cannot get any medication yet. He is a changed man. He was young and did not know his responsibility. He was influenced by others at the time, but now he knows his lesson. He would like to apologize to the committee. He is sorry. He is a truck driver and has driven 2.7 million miles over the road. He has worked for two governors. He has not had tickets or accidents. He has a medal for master truck driver. He has medical illness now. He needs help. He made a bad choice during the time he was young and did not understand life or his responsibility. He is 67 years old and has no Medicare insurance and he needs medical attention. He has diabetes and high blood pressure and had a stroke.
3. The applicant provided medical documents regarding his current health conditions.
4. The applicant's service record shows:

a. DD Form 4 (Enlistment Contract-Armed Forces of the United States) reflects he enlisted in the Regular Army on 29 March 1974.

b. DA Form 20 (Enlisted Qualification Record) shows in item 31 (Oversea Command) he served in Panama from 13 June 1974 to 8 December 1974.

c. Special Court-Martial shows on 9 December 1974 the applicant was found guilty of:

- stealing a U.S. Treasury check a value of \$158.40, the property of [REDACTED]
- with intent to defraud falsely making the signature of [REDACTED] as an indorsement to a certain check between on or about 15 October 1974 and 17 October 1974
- with intent to defraud, offering a certain check on or about 17 October 1974, the signature of which said check was, as he, the applicant, then well known, falsely made

The court sentenced him to reduction to private/E-1, confinement at hard labor for 6 months, and forfeiture of \$200.00 pay per month for 6 months. The sentence was approved on 18 December 1974 and would be duly executed.

d. DA Form 4187 (Personnel Action) shows the applicant was present for duty on 15 January 1975.

e. Special Court Martial Order Number 193 (corrected copy), 19 February 1975 shows Special Court Martial Order Number 14, 18 December 1974, not subsequently modified, is suspended until 3 August 1975, at which time, unless sooner vacated, the suspended portion of the sentence will be remitted without further action

f. DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) reflects the applicant accepted nonjudicial punishment under Article 15 of the UCMJ on 26 April 1974 for absenting himself from his place of duty on or about 23 April 1974. His punishment consisted of reduction to private 2/E-2, forfeiture of \$75.00 for one month and restriction for 7 days. He did not appeal.

g. DA Forms 4187 show the applicant was absent without leave (AWOL) on 14 May 1976 and dropped from the rolls on 27 May 1976.

h. DA Form 3836 (Notice of Return of U.S. Army Member from Unauthorized Absence) shows the applicant surrendered to military authorities on 28 June 1976.

i. Court-martial charges were preferred against the applicant on 15 July 1976. His DD Form 458 (Charge Sheet) shows he was charged with:

- AWOL from on or about 12 May 1976 until on or about 14 May 1976
- AWOL from on or about 14 May 1976 until on or about 28 June 1976

j. The applicant voluntarily requested a discharge under the provision of Army Regulation 635-200 (Personnel Separations-Enlisted Separations), Chapter 10, for the good of the service, in lieu of trial by court-martial on 27 July 1976. The applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a bad conduct discharge; the procedures and rights that were available to him.

(1) He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Department of Veteran Affairs, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life if discharged under a under other than honorable conditions discharge and furnished an Undesirable Discharge Certificate.

(2) He elected to submit statements in his own behalf. In his statement, the applicant indicated he just wanted to say why he deserved to get out of the U.S. Army. He went to Panama as a lifeguard and loved every moment until one day he gets busted for trying to cash a hot check with a friend. They told him they would have to change his military occupational specialty. He told them he did not want to, but they told him he had to anyway because they have all civilian lifeguards at the swimming pool. The applicant told them he wanted to be a truck driver and they sent him to an armor unit. They "brought smoke" on him because he was the only black guy in the section. A sergeant, who was black as well, would show him to all the white guys. The sergeant wanted them to know he was not prejudiced and every time the applicant "got over" it was not favoritism towards him. All the "shitty" details that came up he was on them. He tried to get along with the sergeant. He tried to tell his commander about the sergeant and how he was driving him up a wall and he wanted to get out of the platoon, but the commander told him to hang in there. In effect, the sergeant told him to go to another barracks and the applicant said he was restricted. The applicant went to his room and packed his bags and left. His outstanding performance and 100% effort were not appreciated. He decided that the Army does not pay him enough to take all the unnecessary and undo harassment he gets. He knew this made him look bad and he would take any kind of discharge he got, he guessed he deserved it.

k. The applicant's immediate commander recommended approval of the applicant's voluntary request for discharge with the issuance of a under other than honorable conditions discharge on 4 August 1976. His commander stated the applicant was an excellent Soldier, but he had only been on his first duty station for four months when he

was convicted of stealing, forging, and passing a U.S. Treasury check. His last commander stated in his AWOL inquiry that the applicant has consistently defied the authority of his superiors. He seems unable to take responsibility for his own conduct and recommended an undesirable discharge certificate be issued.

l. The separation authority approved the discharge action on 11 August 1974 under the provisions of Army Regulation 635-200, Chapter 10, and ordered the applicant reduced to the lowest enlisted pay grade and be issued an undesirable discharge.

m. The applicant was discharged on 16 August 1974. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. His service was characterized as under other than honorable conditions. He completed 2 years, 1 month, and 24 days of net active service. He had 84 days of loss time.

n. By regulation AR 635-200, Chapter 10 such discharges are voluntary requests for discharge in lieu of trial by court-martial.

5. 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. 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.

2. A majority of the Board found the applicant's statement describing his post-service achievements compelling in support of clemency. Based on a preponderance of the evidence, a majority of the Board determined the applicant's character of service should be changed to honorable.

3. The member in the minority found the evidence of post-service achievements insufficient in support of clemency, noting the applicant's court-martial conviction and significant period of lost time as factors barring relief in this case. The member in the minority 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 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 reissuing his DD Form 214 to show his character of service as honorable.

12/16/2024

X

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 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.
  - 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 Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of the version in effect at the time provided that a member who committed an offense or offenses for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service at any time after court-martial charges were preferred. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses charged, type of discharge normally given under the provisions of this chapter, the loss of Veterans Administration benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. An Undesirable Discharge Certificate would normally be furnished an individual who was discharged for the good of the Service.

3. Army Regulation 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The information entered thereon reflects the conditions as they existed at the time of separation.

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The Separation Program Designator (SPD) KFS (is to be used for RA Soldiers discharged for the good of the service-in lieu of trial by court martial).

5. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the SPD KFS has a corresponding RE Code of "3."

6. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

7. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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//