

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2024

DOCKET NUMBER: AR20230009681

APPLICANT REQUESTS:

- his under honorable conditions (general) discharge be upgraded to honorable
- correction of the rank on his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- an appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)(duplicate)
- Doctor of Philosophy Degree

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 the correction should be made to correct the errors and injustices of labeling his discharge "under honorable conditions (general) for oversleeping and missing morning formation and for having his pay grade reduced under Article 15 of the Uniform Code of Military Justice (UCMJ) from private first class/E-3 to private/E-1. The correction should be made to follow the recommendation of his veteran's service officer to request recognition of his proficient service as an Airborne Radio Teletype Operator.
3. The applicant was inducted into the Army of the United States on 19 June 1967 for two years. His military occupational specialty was 05C (Radio Operator).
4. The applicant served in Germany from 12 February 1968 through 29 May 1969.
5. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the UCMJ on:

- 21 January 1969, for missing from his assigned guard post without being properly relieved on or about 17 January 1969; his punishment consisted of reduction to E-3, extra duty (suspended)
 - 23 April 1969, for failing to comply with instructions on or about 18 April 1969; his punishment consisted of forfeiture of \$50.00 and reduction of private/E-1
6. The Consultation Sheet, dated 29 April 1969, shows the applicant was found to have a grade I systolic heart murmur at a routine separation examination. Impression: no evidence of heart disease. Recommendation: he was fit for retention or discharge.
7. Memorandum, dated 12 May 1969, issued by Headquarters, U.S. Army Training Center, Fort Dix, NJ, shows secretarial authority granted the applicant's release from active duty (REFRAD) effective as soon as possible, with Separation Program Number (SPN) 21L separation for good and sufficient reason when determined by secretarial authority.
8. The applicant was REFRAD on 13 May 1969 and transferred to the U.S. Army Reserve (USAR), St Louis, MO. His DD Form 214 shows he was REFRAD in the rank/grade of private/E-1, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), with an under honorable conditions (general) discharge (Separation Program Number (SPN) 21L, Reenlistment Code 3. He completed 1 year, 10 months, and 25 days of net service this period. His awards include the National Defense Service Medal.
9. By regulation, a Soldier may be separated for good and sufficient reason as determined by secretarial authority.
10. The applicant provides a copy of his Doctor of Philosophy degree conferred on 14 May 2004.
11. On 13 January 1970, the ABCMR determined on 24 December 1969 (was not available for review) that insufficient evidence had been presented to indicate probable material error or injustice and denied the applicant's application.
12. Letter Orders Number 05-1130839, dated 22 May 1973, discharged the applicant from the USAR with a General characterization of service. Effective 1 June 1973.
13. On 16 January 1992, the ABCMR responded to the applicant request for correction of his military records. The ABCMR provides that it may deny an application without a formal hearing if insufficient evidence has been presented to indicate probable material error or injustice. His request was denied.

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

BOARD DISCUSSION:

1. The Board determined 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.
2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was partially 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.
 - a. Upgrade: Grant. The applicant completed 1 year, 10 months, and 25 days of active service and he received a general discharge. The Board reviewed his NJPs and determined the two NJPs he received were for minor offenses and did not warrant a less than fully honorable character of service. The Board determined an upgrade to fully honorable characterization of service is appropriate.
 - b. Grade; Deny. The applicant received NJP on 21 January 1969, for missing from his assigned guard post without being properly relieved, and the resultant punishment included reduction to E-3. He again accepted NJP on 23 April 1969, for failing to comply with instructions and the resultant punishment included reduction of private/E-1. He held the rank/grade of private/E-1 at the time of separation. There is no error or injustice.

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:

1. 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 13 May 1969 to show his Character of Service: Honorable.
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to his rank/grade.



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, Personnel Separations, in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 5, Section II, Secretarial Authority, of that regulation provides that the separation of soldiers for the convenience of the government is the prerogative of the Secretary of the Army (SA). Except as delegated by this regulation or by special, DA directives, it will be accomplished only by the SA's authority. The separation of any Soldier of the Army under this authority will be based on an SA determination that separation is in the best interests of the Army.

4. 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 for Block 5a (Grade, Rate, or Rank) and 5b (Pay Grade) enter the rank.

5. AR 635-5 (Separation Documents), provides that SPN 21L is appropriate when a Soldier is separated for good and sufficient reason as determined by secretarial authority.

6. 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//