

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2024

DOCKET NUMBER: AR20230009735

APPLICANT REQUESTS:

- Upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general)
- a copy of his DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge)
- Personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Certification of Military Service letter
- National Personnel Records Center (NPRC) 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. The applicant states he did not receive his DD Form 214 following his discharge. He feels his discharge should be upgraded because he served his 2 years at the time of separation. He thought he signed for a general discharge, he doesn't have further information to prove his case, other than his word. He has had a full life and wanted for nothing. He wants to be honored as a Veteran, like all that have served.
3. On 11 January 1967, the applicant enlisted in the Regular Army. Upon completion of training, he was awarded military occupational specialty 94A (Food Service Apprentice).
4. On 3 April 1967, the applicant was reported as absent without leave (AWOL) for the day, from 0630 hours until 2100 hours.

5. On 5 April 1967, the applicant was reported as AWOL a second time and remained absent until he returned to military authorities on 7 April 1967.
6. On 11 April 1967, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for going AWOL on two occasions. His punishment included forfeiture of \$15.00 and 10 days restriction.
7. On 20 June 1967, the applicant was reported as AWOL a third time and remained absent until he returned to military authorities on 25 June 1967.
8. On 26 June 1967, the applicant accepted NJP under Article 15 of the UCMJ, for going AWOL. His punishment included forfeiture of \$20.00 per month for one month, and 14 days restriction and extra duty.
9. On 1 July 1967, the applicant was reported as AWOL a fourth time and remained absent until he returned to military authorities on 17 July 1967.
10. On 19 July 1967, the applicant was reported as AWOL a fifth time and remained absent until he returned to military authorities on 30 August 1967.
11. Before a special court-martial on 25 September 1967, at Fort Knox, KY, the applicant was found guilty of two specifications of going AWOL. The court sentenced him to confinement at hard labor for three months and forfeiture of \$64.00 per month for three months. The sentence was approved on 28 September 1967.
12. On 23 February 1968, the applicant accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty on or about 29 January 1968. His punishment included forfeiture of \$24.00 per month for one month, and 14 days restriction and extra duty.
13. On 17 September 1968, the applicant accepted NJP under Article 15 of the UCMJ, for riding his motorcycle in an unauthorized area on or about 25 August 1968. His punishment included reduction in grade to E-2.
14. On 26 November 1968, the applicant was reported as AWOL a sixth time and remained absent until he returned to military authorities on 29 November 1968.
15. On 6 December 1968, the applicant was reported as AWOL a seventh time and remained absent until he returned to military authorities on 3 March 1969.
16. On 15 March 1969, the applicant was reported as AWOL an eighth time and remained absent until his apprehension by military authorities on 17 April 1969.

17. Before a special court-martial on 19 May 1969, at Fort Knox, KY, the applicant was found guilty of three specifications of going AWOL. The court sentenced him to confinement at hard labor for three months and forfeiture of \$73.00 per month for three months. The sentence was approved on 22 May 1969.

18. The applicant's record is void of his commander's notification of his intent to initiate separation actions against him. However, a DA Form 2496-1 (Disposition Form) dated 19 May 1969, shows the applicant was referred for psychiatric evaluation and being considered for separation under the provisions of Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), by reason of unfitness for military service. As the specific reasons, the commander cited the applicant's AWOL, and previous NJPs and court-martial.

19. On 26 May 1969, the applicant consulted with legal counsel 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.

20. On 4 June 1969, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

21. On 9 June 1969, the applicant's commander formally recommended the applicant's discharge, under the provisions of Army Regulation 635-212, for unfitness, with an undesirable discharge.

22. Consistent with the chain of command's recommendations, the separation authority approved the recommended discharge on 18 June 1969, and directed the issuance of a DD Form 258A (Undesirable Discharge Certificate).

23. The applicant's record is void of a DD Form 214. However, a Certification of Military Service shows his service was terminated on 26 June 1969. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC.

24. The applicant petitioned the Army Discharge Review Board requesting upgrade of his undesirable discharge. On 9 July 1980, the Board voted to deny relief and determined his discharge was both proper and equitable.

25. The applicant provides a letter from the NPRC in response to his request for copies of his service records. He was informed that his service records did not contain a copy

of his DD Form 214, nor its equivalent. He was furnished a Certification of Military Service letter, in lieu. This letter is provided in its entirety for the Board's review within the supporting documents.

26. 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 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 not 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 Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

a. Discharge Upgrade: Deny. The applicant was discharged due to unfitness following multiple NJPs, two courts-martial convictions, and being AWOL on 8 separate occasions. The Board found no error or injustice in his separation processing in the available records. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. DD Form 214: Deny. The applicant's record is void of a DD Form 214. The Board is not a custodian of the applicant's records. Additionally, when a DD Form 214 is misplaced or lost, certain authorized agencies may issue a Certification of Military Service to replace the DD Form 214. The applicant has already been issued a Certification of Military Service.

BOARD VOTE:

Mbr 1    Mbr 2    Mbr 3

:	:	:	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.

█

█

---

█

█

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. 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. 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.

c. Paragraph 1-9f provided that an undesirable discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for unfitness, misconduct, homosexuality, or for security reasons.

4. Army Regulation 635-212, then in effect, provided the policy and procedures for administrative separation of enlisted personnel for unfitness and unsuitability. It provided that individuals would be discharged by reason of unfitness when their records

were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay just debts. This regulation also prescribed that an undesirable discharge was normally issued.

5. 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//