

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 2 April 2024

DOCKET NUMBER: AR20230010102

APPLICANT REQUESTS: upgrade of his undesirable discharge under other than honorable conditions to an honorable character of service.

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

- DD Form 293 (Application for the Army Discharge Review Board (ADRB))
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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 was an excellent Soldier, but he had to endure a lot of discrimination; he comments, "I think it was very sad the way I was treated."

a. The applicant indicates he protested, but it did not do any good. Subsequently, while he was a supply clerk, he gave another Soldier a ride to the airport, but as he drove back, the van he was driving "ran hot," so he decided to pull over near a bar to let the van cool down before he attempted to drive back to the base.

b. Apparently, another Soldier (probably a noncommissioned officer) reported him, and a board "slapped" him with the misuse of a government vehicle; that was how he got his "212 discharge" (referring to a discharge under the provisions of Army Regulation (AR) 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability)). The applicant added he really wants his character of service upgraded.

3. A review of the applicant's service record reveals the following:

- a. On 29 April 1969, the applicant enlisted into the Regular Army for 3 years; he was 19 years old. Upon completion of initial entry training and the award of military occupational specialty (MOS) 76A (Supply Clerk), orders assigned him to Fort Richardson, AK, and he arrived at his new unit, on 6 November 1969.
- b. Headquarters, Fort Richardson orders, 13 November 1969 awarded him 94B (Cook) as secondary MOS. On 11 February 1970, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for failing to report on time to his place of duty: the Officer's Club.
- c. Effective 15 June 1970, unit orders promoted the applicant to specialist four (SP4)/E-4. Headquarters, Fort Richardson orders, 8 July 1970, withdrew MOS 76A as the applicant's primary and replaced it with MOS 94B, effective 15 June 1970.
- d. On 29 September 1970, the applicant accepted NJP for having been absent without leave (AWOL) for four days (10 to 14 September 1970); punishment included a suspended reduction to private first class (PFC)/E-3.
- e. On 18 January 1971, the applicant accepted NJP for being AWOL, from 8 to 9 January 1971, and disobeying a staff sergeant's (SSG) order to report for work at 0730, on 8 January 1971; the imposing commander's punishment was reduction to PFC.
- f. On 13 July 1971, the applicant underwent a mental status evaluation; the examining physician found no significant mental illness and determined the applicant met medical retention standards, as outlined in AR 40-501 (Standards of Medical Fitness).
- g. On 14 July 1971, the applicant accepted NJP for wrongfully appropriating a government commercial van; the imposing commander (Colonel J__ T. T__) directed the applicant's reduction to private (PV2)/E-2, the forfeiture of \$100 per month for 2 months, and 30-days restriction and extra duty. On 19 July 1971, the applicant filed an appeal, arguing his punishment was too severe, particularly the requirement to perform five hours of extra duty per day for 30 days. On 28 July 1971, the appellate authority (Major General (MG) J__ F. H__) denied the applicant's appeal.
- h. On or about 29 July 1971, the applicant's company commander (Captain (CPT) F__ C. A__) prepared a statement, in which he recommended the applicant's separation, per AR 635-212; the commander maintained the applicant had been a "constant discipline problem since his assignment to this unit. He has been counseled by me on numerous occasions concerning his lack of adaptability to military discipline and his poor attitude toward the military in general." The commander added, "[Applicant] is substandard to his peers in personal appearance, personal hygiene, attitude, job performance, and enthusiasm."

i. On 29 July 1971, CPT F__ C. A__ (applicant's commander) signed a memorandum, subject: "Unsatisfactory Conduct and Efficiency Rating [Applicant]]. The commander stated he was giving the applicant unsatisfactory ratings for conduct and efficiency based on the receipt of four NJPs; in addition, the applicant had a long history of indebtedness.

j. On or about 29 July 1971, and in a written statement, the applicant's first sergeant (1SG) (1SG E__ A. B__) recommended the applicant's elimination from the Army; he indicated the applicant was a "constant disciplinary problem" and required constant supervision. Additionally, the applicant's appearance, military bearing, and self-discipline were substandard.

k. On 2 August 1971, the applicant's company commander forwarded his recommendation to eliminate the applicant from the Army; as his basis, the commander cited the applicant's prior NJPs and letters of indebtedness.

l. On 7 September 1971, a board of officers convened to determine whether the applicant should be retained or discharged; the applicant and his counsel were present. After accepting documentary evidence, which included the applicant's NJP actions, the board heard testimony.

(1) CPT F__ C. A__ (applicant's company commander) stated he had been the applicant's commander since he took command last November.

(a) CPT A__ noted that, while reviewing the applicant's records, he discovered the applicant, who was working in the supply room at the time, held 94B (Cook) as his MOS. CPT A__ asked the 1SG what the applicant was doing in unit supply, and the 1SG replied that the applicant had been moved because he had proven he was totally unreliable as a cook, but he was doing a good job in supply. The commander decided to move the applicant back to the mess hall, but he acknowledged that doing so had been a mistake.

(b) In January 1971, CPT A__ administered NJP to the applicant after the applicant failed to report to duty and disobeyed a SSG's order. Because this was the applicant's third NJP, the CPT A__ sought the advice of the Deputy Post Commander; CPT A__ suggested the applicant should be separated under AR 635-212, but the Deputy Post Commander told CPT A__ to wait 21 days and then report back as to how the applicant was doing.

(c) Around that time, the unit received a phone call from the applicant's hometown that the applicant "gotten a girl in trouble," and needed to return home, so the commander granted him leave. The commander then commented, "During the time

he was working, I don't believe [Applicant] successfully worked three weeks in a row satisfactorily."

(d) In July 1971, the applicant misappropriated of an Army vehicle; his excuse was that he "gave a ride to a guy to the international airport and then the gears got stuck and later the truck was found in the vicinity of the (local) bar." In the commander's view, "this...broke the camel's back," and the commander subsequently initiated separation action.

(e) During cross examination by applicant's counsel, the commander disclosed that, when he had screened the applicant's service record, he had assumed the applicant was a school-trained 94B, and he never realized the applicant's actual MOS was supply. Additionally, although he had counseled the applicant on numerous occasions and always kept notes of the counseling sessions, "the book I kept them in somehow got misplaced." The commander further acknowledged the applicant had volunteered for Vietnam, but he had disapproved that request.

(2) Sergeant First Class (SFC)/E-7 L__ H__ stated the applicant had worked for him in the mess hall, but he had requested the applicant's transfer after the applicant continually reported late for work.

(3) 1SG E__ A. B__, the applicant's 1SG, stated he knew the applicant since being assigned as the unit's 1SG.

(a) During that period, the applicant's supervisor in the mess hall had a problem with the applicant, but, during the time the applicant worked in supply, the 1SG had no issues; the 1SG had also heard that the applicant kept his area pretty clean but there were times when it was not "up to par." The 1SG added he did not believe the applicant had had any conflicts with other Soldiers in the unit, but he thought nonetheless that the applicant should be discharged.

(b) On questioning by the applicant's counsel, the 1SG disclosed he had spent less time with the applicant than the average time he spent with other Soldiers; based on the short period of time of knowing the applicant, the 1SG recommended the applicant receive a general discharge under honorable conditions.

(4) SFC B__ S__ stated the applicant worked for him in February and March and, for the first couple of weeks, the applicant had done a very good job; however, he started getting complaints from the other cooks about the applicant was not pulling his share, so, to avoid more dissention, SFC S__ requested the applicant's transfer. In follow-up questions by the board, SFC S__ stated, "For no apparent reason, [Applicant] just started performing badly in his duties. I talked with him and asked him if he had a

financial or personal problem we could help him with period he never gave me a reason for his change of behavior."

(5) SFC R__ C__ stated, last September and for about 30 days, he was the acting 1SG. During that time, the mess hall was having difficulty with several of the cooks; specifically, three cooks, including the applicant. The mess steward asked to move the three cooks, and SFC C__ transferred the applicant to unit supply; after that, he had no further contact with the applicant, but he would welcome the applicant back to work for him.

(6) SFC R__ J__ stated he was the company supply sergeant and was the applicant's direct supervisor. For the first month and a half, the applicant did an outstanding job, but after the truck incident, the applicant "just went to pieces"; SSG J__ said the applicant was late for work and would not perform his duties correctly, so he took the applicant to the 1SG and asked to have the applicant transferred.

(7) The applicant testified and gave a summary of his military service to date.

(a) The applicant noted he was a school-trained supply clerk, but when he arrived at Fort Richardson, the personnel clerks told him there were no openings in supply; they said he could either stay there and be a cook or transfer to Fort Greely as a supply clerk, and the applicant elected to stay and serve as a cook.

(b) "The truck incident happened this way. It was payday and I was order(ed) to dispatch a truck from TMP (Transportation Motor Pool) and deliver some chairs. I did as told but when I finished, instead of turning the truck back in, I went to eat and then up to my barracks. While I was in the barracks, a guy came in looking for somebody but he could not locate him. This Soldier, I did not know him before, asked me if I could take him to the airport. So, since I had a truck signed out to me, I thought it wouldn't hurt to take him to the airport."

(c) The applicant continued, "When I dropped the Soldier at the airport, the gears in the truck got stuck on me. So I finally got them to work and proceeded to come back to post. But they got stuck on me again, so I had some friends help me fix them and I turned the truck back in around five o'clock. I now know it was wrong of me to have done what I did. If I am retained, I would prefer not to stay in the same company."

(d) The applicant added, "I want to get out of the company because, when CPT A__ (applicant's commander) first got there, he told me I was a disciplinary problem and he told me that if I didn't do this their way, they would, in return, give something else." "As for the four-day AWOL, I didn't go anywhere...I was in the company drinking and sleeping because it was during the weekend." "I do not like being a cook, I would prefer to be a supply clerk, although I was a cook in civilian life." "Although I have a nervous

condition, it does not interfere with my work. I don't get bored easy; I always try to excel on all my jobs."

I. After considering the testimony and documentary evidence, the board issued its findings and recommendations:

(1) The board determined the applicant was:

- "Undesirable for further retention in the military service because of habits and traits of character manifested by repeated commission of petty offenses"
- "Undesirable for further retention in the military service because of frequent incidents of a discreditable nature"
- Not deemed a candidate for rehabilitation

(2) In view of the findings, the board recommended the applicant's undesirable discharge.

m. On 22 September 1971, the separation authority approved the board's findings and recommendations and directed the applicant's undesirable discharge under other than honorable conditions; the separation authority also ordered the applicant's reduction to the lowest enlisted grade.

n. On 24 September 1971, orders discharged the applicant accordingly. His DD Form 214 shows he was discharged under the provisions of AR 635-212 with an under other than honorable conditions characterization of service (Separation Code 28B and Reenlistment Code 4). He completed 2 years, 4 months, and 22 days of his 3-year enlistment contract; item 24 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) lists the National Defense Service Medal and a marksmanship qualification badge.

o. On 28 July 2010, the applicant petitioned the ADRB, requesting an upgrade to general under honorable conditions.

(1) The applicant maintained, while on active duty, he did nothing wrong; he only used an Army vehicle to transport a person to the airport and brought the vehicle back in good shape.

(a) With his application, the applicant included a baptismal certificate and eight letters of support, all of which characterized the applicant as hardworking, dependable, and respectful of others.

(b) Additionally, the controller of his former employer wrote, "[Applicant] began as a cook and had advanced to a supervisory position until recently because of health issues. There are numerous qualities that are needed in this type of position: adaptability, creativity, and punctuality are key qualities." "On a personal note, [applicant] is a thoughtful and compassionate person."

(2) On 7 October 2010, the Army Review Boards Agency (ARBA) administratively closed the applicant's request and advised the applicant, via letter, that the ADRB was statutorily precluded from addressing his petition; ARBA enclosed a blank DD Form 149 (Application for the ABCMR) and recommended filing his request with the Board. On 19 October 2010, the U.S. Postal Service returned ARBA's correspondence with the comment, "Attempted-Not Known; Unable to Forward."

4. Clemency guidance to the Boards for Correction of Military/Navy Records (BCM/NR) does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority to ensure each case will be assessed on its own merits. In determining whether to grant relief BCM/NRs 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. This includes consideration of changes in policy, whereby a service member under the same circumstances today would reasonably be expected to receive a more favorable outcome.

5. Published guidance to the BCM/NRs clearly indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found 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. The applicant was discharged due to unfitness following multiple NJPs, being a "constant discipline problem since his assignment to his unit", numerous counseling, lack of adaptability to military discipline and his poor attitude toward the military in general. A Board of officers

convened and found the applicant was undesirable for further retention in the military service because of habits and traits of character manifested by repeated commission of petty offenses, undesirable for further retention in the military service because of frequent incidents of a discreditable nature, and not deemed a candidate for rehabilitation. The Board of officers recommended the applicant's undesirable discharge. The Board found no error or injustice in his separation processing. 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.

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.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[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, 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 635-212, in effect at the time, set forth the basic authority for separating enlisted personnel for reasons of unfitness or unsuitability. Paragraph 6 (Applicability) stated Soldiers were subject to separation for unfitness under the provisions of this regulation when they were involved in such misconduct as frequent acts of a discreditable nature.
3. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribed policies and procedures for enlisted administrative separations.
 - a. Paragraph 1-9d (Honorable Discharge) stated an honorable discharge was a separation with honor. Issuance of an honorable discharge was conditioned upon proper military behavior and proficient duty performance. A Soldier's service was to be characterized as honorable based on conduct ratings of at least "Good"; efficiency ratings of at least "Fair"; no general court-martial, and no more than one special court-martial conviction.
 - b. Paragraph 1-9e (General Discharge) stated a general discharge was a separation from the Army under honorable conditions, where the Soldier's military record was not sufficiently meritorious to warrant an honorable discharge.
4. AR 600-200 (Enlisted Personnel Management System), in effect at the time, prescribed policies and procedures for the management of enlisted personnel. Paragraph 7-30b (3) (Reduction Authority and Reasons – Reasons for Reduction – Approved for Discharge from Service with an Undesirable Discharge) stated Soldiers approved for separation with an undesirable discharge were required to be reduced to the lowest enlisted grade.
5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs 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.

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, BCM/NRs 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//