

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 May 2024

DOCKET NUMBER: AR20230010117

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) character of service.

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

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 was very young, immature, and made a lot of mistakes. He is very sorry for those mistakes and has regretted them his entire life. His grandson is now serving in the Marine Corps.
3. The applicant enlisted in the Regular Army on 11 May 1966 for 3 years. Upon completion of initial entry training, he was awarded military occupational specialty 72B (Communications Specialist). The highest rank he attained was private first class/E-3.
4. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on two occasions:
 - a. On 26 August 1966, for being disrespectful in language towards a specialist five/E-5, on or about 25 August 1966. His punishment consisted of 14 days of extra duty, 14 days restriction, and forfeiture of \$10.00 pay.
 - b. On 26 January 1967, for being derelict in the performance of his duty as charge of quarters runner, to wit: sleeping on duty, on or about 25 January 1967. His punishment consisted of reduction to private/E-2, 14 days of extra duty, and 14 days restriction.

5. Before a special court-martial at Fort Benning, GA, on 20 July 1967, the applicant pled guilty to and was found guilty of absenting himself without authority (AWOL) on or about 6 April 1967 until on or about 26 April 1967, disobeying a lawful command from his superior officer, on or about 17 May 1967, and breaking restriction, on or about 31 May 1967. His sentence consisted of confinement at hard labor for six months, forfeiture of \$37.00 pay per month for six months, and reduction to private/E-1. The sentence was approved and ordered duly executed on 4 August 1967.

6. Special Court-Martial Order Number 97, issued by Headquarters, U.S. Army Infantry Center, Fort Benning, GA, dated 18 September 1967, shows the findings of guilty and sentenced adjudged on 20 July 1967, were set aside due to an unreasonable delay in the trial. All rights, privileges, and property of which the applicant was deprived, by virtue of the findings of guilty and the sentence, were restored.

7. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ on 4 October 1967, for being AWOL, on or about 3 October 1967. His punishment consisted of forfeiture of \$28.00 pay per month for two months and 45 days restriction.

8. The applicant was notified on 20 December 1967 of his commander's intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), by reason of unfitness.

9. On that same date, the applicant acknowledged receipt of the notification and was counseled on the basis for the contemplated separation action, its effects, and the rights available to him. He waived consideration and appearance before a board of officers. He acknowledged understanding he may expect to encounter substantial prejudice in civilian life in the event of a general discharge, and he may be ineligible for many or all benefits as a Veteran under both Federal and State laws as a result of a UOTHC discharge. He elected not to submit statements in his own behalf.

10. He underwent a mental hygiene consultation on 28 December 1967. The evaluating provider determined the applicant was mentally responsible and able to determine right from wrong. He had the mental capacity to participate in board proceedings. He was psychiatrically cleared for any administrative action deemed appropriate by his command.

11. On that same date, he underwent a medical examination. The relevant Standard Form (SF) 93 (Report of Medical History) and corresponding SF 88 (Report of Medical Examination) show the applicant reported being in good health and was found to have no clinical abnormalities upon evaluation.

12. Before a special court-martial, at Fort Benning, GA, on 30 November 1968, the applicant pled guilty to and was found guilty of two specifications of being AWOL, on or about 23 October 1967 until on or about 24 October 1967, and on or about 25 October 1967 until on or about 30 November 1967. He was sentenced to confinement at hard labor for three months. The findings of guilty and the sentence were approved on 15 January 1968. The execution of the sentence was suspended for three months.

13. On 3 February 1968, the applicant's commander recommended the applicant be separated from service, prior to the expiration of his term of service, under the provisions of AR 635-212, by reason of unfitness. The commander further stated, [the applicant] was a rehabilitative transfer. Any further attempts at rehabilitation were unlikely to succeed. His duty performance was unsatisfactory, and his service was characterized by intentional acts of misconduct, willful refusal to conform to the minimum requirements of military standards, and an unrelenting disregard for authority.

14. The applicant's intermediate chain of command reviewed and concurred with the recommended separation action, further recommending the issuance of an undesirable discharge.

15. On 22 March 1968, the separation authority approved the recommended separation action and directed the issuance of a DD Form 258A (Undesirable Discharge Certificate).

16. The applicant was discharged on 1 April 1968, under the provisions of AR 635-212. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) confirms his service was characterized as UOTHC. He was credited with 1 year, 7 months, and 21 day of net active service this period, with 90 days of lost time.

17. The Army Discharge Review Board (ADRB) considered the applicant's request for an upgrade of his service characterization on or about 7 July 1975. After careful consideration, the Board determined he was properly discharged and denied his request for relief.

18. AR 635-212, in effect at the time, stated that an individual was subject to separation when it was clearly established that despite attempts to rehabilitate or develop him as a satisfactory Soldier, further effort was unlikely to succeed.

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

BOARD DISCUSSION:

The Board carefully considered the applicant's request, 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. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board 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 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.

9/24/2024

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, 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 635-200 (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.

3. AR 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.

4. 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//