

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2024

DOCKET NUMBER: AR20230010341

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service and an appearance before the Board via video or telephone.

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

DD Form 149 (Application for Correction of Military Record), with self-authored statement

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, his UOTHC discharge was unfair. His Captain had already signed approval for his general discharge. Three weeks before his discharge, the approval was torn up. He could not worry about his discharge right away because he was caring for his brother. He recently came into contact with a buddy who informed him of the application process to correct his wrongful discharge characterization.
3. The applicant enlisted in the Regular Army on 29 October 1971 for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 94B (Food Service Specialist). The highest rank he attained was private first class/E-3.
4. The applicant was notified on 4 January 1972 of his commander's intent to initiate proceedings to discharge him from service under the provisions of Army Regulation (AR) 635-206 (Discharge-Misconduct [Fraudulent Entry, Conviction by Civil Court, and Absence without Leave or Desertion]), by reason of fraudulent entry.
5. On 11 January 1972, the applicant was advised by counsel of the basis for the contemplated action, its effects, and the rights available to him. He requested a

personal appearance and consideration of his case before a board of officers, with representation by appointed counsel.

6. The applicant's immediate commander recommended his separation from service, on the basis of his failure to notify enlistment authorities of his previous contact with the Chicago Police Department. Both intermediate commander's concurred with the recommendation.

7. On 10 February 1972, the separation approval authority directed that a board of officers be convened to determine whether or not the applicant should be separated.

8. The board convened on 14 March 1972. The board determined the applicant did fraudulently enlist, his performance of duty was satisfactory with no record of disciplinary action, and he successfully completed basic training. The board recommended he be discharged from the service with a DD Form 257A (General Discharge Certificate).

9. Counsel appealed the board's recommendation and submitted a request for retention on 11 April 1972. A memorandum dated 1 May 1972, shows that the separation authority further approved the board recommendation. However, the execution of the discharge was suspended for six months. Upon the applicant's satisfactory completion of the probationary period, the approved discharge would be canceled.

10. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on four occasions:

a. On 3 May 1972, for failure to go at the time prescribed to his appointed place of duty, on or about 3 May 1972. His punishment consisted of forfeiture of \$35.00 pay.

b. On 13 November 1972, for failure to obey a lawful order to shave his beard, on or about 13 November 1972. His punishment consisted of forfeiture of \$50.00 pay and 14 days of extra duty and restriction.

c. On 30 January 1973, for failure to go at the time prescribed to his appointed place of duty, on or about 29 January 1973. His punishment consisted of an oral reprimand.

d. On 21 June 1973, for absenting himself from his place duty without authority, on or about 21 June 1973. His punishment consisted of reduction to private/E-2, forfeiture of \$80.00 pay, and 14 days of restriction.

11. Before a special court-martial on 29 August 1973, at Camp Stanley, Korea, the applicant was found guilty of wrongfully and falsely having in his possession a military pass, on or about 11 July 1973, failure to obey a lawful order, on or about 20 July 1973 and 22 July 1973, and failure to go at the time prescribed to his appointed place of duty, on or about 23 July 1973. He was sentenced to reduction to private/E-1, confinement at hard labor for 60 days, forfeiture of \$100.00 pay per month for three months, and 30 days of restriction. The sentence was approved and ordered duly execute on 9 January 1974.

12. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ on three additional occasions:

a. On 8 February 1974, for absenting himself from his place of duty without authority, on or about 7 February 1974. His punishment consisted of forfeiture of \$77.00 pay.

b. On 19 March 1974, for being derelict in the performance of his duty, on or about 14 March 1974. His punishment consisted of seven days of extra duty and restriction.

c. On 16 July 1974, for willfully disobeying a lawful command from his superior commissioned officer, on or about 9 July 1974. His punishment consisted of forfeiture of \$84.00 pay and 14 days of extra duty and restriction. The applicant's appeal of his punishment was denied on 8 August 1974.

13. A DA Form 2496 (Disposition Form), dated 30 July 1974, shows the applicant was late or absent from his place of duty on 15 occasions between 2 July 1974 and 29 July 1974.

14. A medical statement, dated 7 August 1974, and associated documents, show the applicant underwent both a physical and mental status examination on that same date. He was found physically and mentally fit for duty. He had no profile limitations. He was deemed mentally responsible and able to understand and participate in board proceedings.

15. The applicant's commander initiated a Bar to Reenlistment on 4 September 1974. As reasons for the action, the commander noted the applicant's history of judicial and nonjudicial punishments, and the concealment of his civilian police arrests, confinements, and court decisions. The bar was approved on 1 October 1974.

16. The applicant received a formal letter of reprimand on 26 September 1974 for having a .25 caliber automatic pistol and a clip containing seven rounds of .25 caliber ammunition in his wall locker.

17. The applicant's commander notified the applicant on 30 September 1974 of his intent to initiate action to separate the applicant from service under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), paragraph 13-5a (1), for incidents of a discreditable nature, and paragraph 13-5a (4), for shirking.

18. The applicant consulted with legal counsel on 30 September 1974. He was advised of the basis for the contemplated separation action under the provisions of AR 635-200, Chapter 13, by reason of unfitness, its effects, and the rights available to him. Subsequently, he requested a personal appearance and consideration of his case before a board of officers, with representation by appointed counsel. He elected not to submit a statement in his own behalf.

19. On that same date, the applicant's commander recommended the applicant be required to appear before a board of officers to determine whether the applicant should be discharged prior to the expiration of his term of service under the provisions of AR 635-200, Chapter 13, by reason of frequent incidents of a discreditable nature and an established pattern of shirking. The commander noted the applicant continually failed to perform his assigned duties and obey orders from his superiors. Repeated counseling sessions and punishment failed to impress upon him the requirement to live by military rules and regulations. The intermediate commander concurred with the recommendation.

20. A board of officers convened on 18 October 1974. The board determined the applicant was unfit for further retention, due to frequent incidents of a discreditable nature with civil or military authorities and an established pattern of shirking. Rehabilitation was not deemed possible. The board recommended the applicant be discharged from service, due to unfitness, with the issuance of a DD Form 258A (Undesirable Discharge Certificate).

21. The applicant was discharged on 25 October 1974, under the provisions of AR 601-210 (Personnel Procurement – Regular Army Enlistment Program), paragraph 2-5. His DD Form 214 (Report of Separation from Active Duty) confirms his character of service was UOTHC, with separation code JLB (discreditable incidents – civilian or military) and reenlistment code RE-3, 3B. He was credited with 3 years of net active service, with 26 days of lost time. He served in the Republic of Korea from 30 March 1973 to 10 April 1974.

22. The Board should consider the applicant's overall 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 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.

a. The evidence shows the applicant was initially recommended for separation by a board of officers due to fraudulent entry. Although the separation authority approved the board recommendation, he suspended the execution of the discharge for six months. Upon the applicant's satisfactory completion of the probationary period, the approved discharge would be canceled.

b. Despite being given a second chance, the applicant's subsequent service was checkered with misconduct consisting of at least seven NJPs, a bar to reenlistment, a formal letter of reprimand (for having a .25 caliber automatic pistol and a clip containing seven rounds of .25 caliber ammunition in his wall locker), and court-martial conviction. His continuous and frequent incidents of a discreditable nature and an established pattern of shirking left his commander with little choice but to recommend his separation for unfitness. A board of officers convened and confirmed his unfitness for further retention, due to frequent incidents of a discreditable nature with civil or military authorities and an established pattern of shirking. The board of officers recommended his discharge for unfitness, with the issuance of Undesirable Discharge Certificate.

c. 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.

█

█ █

█

█

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 regulation provides that the ABCMR may, in its discretion, hold a hearing. 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 601-210, prescribes the eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army and the U.S. Army Reserve. Paragraph 2-5 provides for waivable moral and administrative disqualifications.
4. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel. The regulation provides:
 - a. Paragraph 1-9d, 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. Paragraph 1-9e, 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. Paragraph 1-9f, an undesirable discharge is an administrative separation under conditions other than honorable. It may be issued for unfitness, misconduct, homosexuality, or for security reasons. When an undesirable discharge is authorized by regulation a member may be awarded either an honorable or general discharge if, during the period of service, the servicemember was awarded a personal decoration, or if warranted by the circumstances of a specific case.
 - d. Paragraph 13-5a (1), provided for separation for unfitness, which included frequent incidents of a discreditable nature with civil or military authorities. When separation for unfitness was warranted, an undesirable discharge was normally considered appropriate.

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//