

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 10 May 2024

DOCKET NUMBER: AR20230010529

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-Authored Statement
- DD Form 214 (Report of Separation from Active Duty)

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 sentenced to 15 months at Fort Leavenworth, KS for insubordination to a sergeant/E-5. The insubordination happened because of a hazing incident at Fort Bragg, NC in 1973. He was discharged on 15 April 1974 on a civil rights violation.
3. The applicant enlisted in the Army National Guard (ARNG) on 21 April 1972.
4. The applicant entered active duty on 7 July 1972. He was honorably released from active duty for training on 10 November 1972 and reverted to ARNG. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 4 months and 4 days of active service.
5. The applicant was honorably discharged from the ARNG and transferred to the U.S. Army Reserve (USAR) on 9 October 1973. Letter Orders Number E-08-84, dated 28 August 1973, ordered him to active duty service and he entered active duty on 10 October 1973.

6. Before a special court martial on 29 January 1974, the applicant was found guilty of two specifications of being disrespectful in language on or about 11 December 1973. The court sentenced him to confinement at hard labor for 75 days, forfeiture of \$125.00 per month for 2 months. The sentence was approved on 14 February 1974 and would be duly executed.

7. The applicant's Resume of Attitude, Conduct, Performance, and Discreditable Acts shows counseling on various occasions between 29 January 1974 and 12 March 1974 for:

- special court martial
- disrespect in language to a noncommissioned officer (twice)
- bad attitude, unauthorized items in locker (twice)
- failed to prepare for inspection, not active in group counseling exercise
- late for roll call formation, wall locker not prepared for inspection
- involved in several barracks problems, failed to be present at reveille formation,
- late formation (twice), hostile during counseling, failed barracks inspection
- not at proper place at proper time
- bad attitude and his desire for discharge
- failed barracks inspection
- social worker evaluation he states a desire for discharge and recommended for discharge as unfit

8. The Report of Mental Status Evaluation, dated 28 March 1974, shows the applicant did not have significant mental illness, was mentally responsible, able to distinguish right from wrong, able to adhere to the right, had the mental capacity to understand and participate in board proceedings, and met retention standards.

9. The applicant's immediate commander recommended his separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), paragraph 13-5, for unfitness on 29 March 1974. He recommended the separation because of an established pattern of shirking. The applicant had been reassigned to the Retraining Brigade and continued his pattern of unacceptable behavior. His chain of command recommended approval of the applicant's discharge for unfitness.

10. The applicant consulted with legal counsel and was advised of the basis for the contemplated action to accomplish his separation under the provisions of AR 635-200, Chapter 13, for unfitness, the rights available to him, and the effect of action taken by him. The applicant waived consideration of his case by a board of officers and waived a personal appearance before a board of officers.

a. He waived representation by counsel. He understood that he may expect to encounter substantial prejudice in civilian life if a under honorable conditions (General) discharge was issued to him and a UOTHC discharge may make him ineligible for many or all benefits as a veteran under both Federal and state laws and that he may expect to encounter substantial prejudice in civilian life.

b. He elected not to submit statements in his own behalf.

11. A Statement of Medical Condition shows there had been no change in his medical condition since his last separation examination on 28 March 1974.

12. The separation authority approved the separation on 8 April 1974, under the provisions of AR 635-200, paragraph 13-5, for unfitness. He directed that the applicant be furnished an Undesirable Discharge Certificate.

13. The applicant was discharged on 15 April 1974. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 13-5a(1), for unfitness with Separation Program Designator 28B (frequent involvement in incidents of a discreditable nature with civil or military authorities) and Reenlistment Code 3. His service was characterized as UOTHC. He completed 4 months and 3 days of active service. His lost time (63 days) from 29 January 1974 through 21 March 1974. He was awarded the National Defense Service Medal.

14. Regulatory guidance provides for separation due to unfitness under the provisions of Chapter 13 of AR 635-200 for unfitness. Applicable to persons who are best described as having an established pattern for shirking.

15. On 13 March 1979, the Army Discharge Review Board determined the applicant was properly discharged and denied his request for a change in the type and nature of his discharge.

16. 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:

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 conduct and the reason for separation. The applicant was separated for unfitness due to an established pattern of shirking. The applicant had been reassigned to the Retraining Brigade and continued his pattern of unacceptable behavior. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned by his commander during separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[REDACTED]			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]

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 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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. 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 13. This chapter establishes policy and provides procedures and guidance for eliminating enlisted personnel found to be unfit or unsuitable for further military service. Action will be taken to separate an individual for unfitness when it is clearly established that: (1) Despite attempts to rehabilitate or develop him as a satisfactory soldier, further effort is unlikely to succeed; or (2) Rehabilitation is impracticable, or he is not amenable to rehabilitation measures (as indicated by the medical and/or personal history record).

3. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and 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//