

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 May 2024

DOCKET NUMBER: AR20230011272

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions (UOTHC) characterization of service
- correction to block 3 (Social Security Number (SSN)) of his DD Form 214 (Report of Separation from Active Duty) to show his SSN as [REDACTED] instead of [REDACTED]

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, 28 December 1973
- Front and back image of Social Security Card, undated

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 his sergeant (SGT) was rough with him because he could not perform his physical demands after he had surgery for a chest condition in 1973. He paid another Soldier to cover a weekend detail for him, and upon his return to his unit, his SGT told him he had not completed it and was absent without leave (AWOL) for two days. His SGT kept yelling at him and was rough with him, so he went AWOL and, upon his return, was placed in the stockade for 44 days even though he was told he would only have to serve 10 days. His SGT kept pushing and threatening to beat him up, so he went AWOL again. When he returned from being AWOL, he was placed in the stockade again, and a few days later, he was sent home. He knows he was wrong for going AWOL, but he feared his SGT would have severely beaten or killed him. He asked for a transfer to another unit or overseas duty to escape his SGT, but his requests were denied. He believes he is a good person who has never committed any

crimes since he was in the Army and only wants to get his story out to make things right.

3. The applicant enlisted in the Regular Army on 23 August 1972, for 4 years. His DD Form 4 (Enlistment Contract – Armed Forces of the United States) shows his SSN as [REDACTED]. The highest rank/grade he held was private /E-2.

4. A DA Form 268 (Report for Suspension of Favorable Personnel), two DA Forms 188 (Extract Copy of Morning Report), DA Form 3836 (Notice of Return of U.S. Army Member from Unauthorized Absence), and DA Form 20 (Enlisted Qualification Record), show:

a. A record of the applicant's four AWOLs, apprehension by civil authorities (ACA), return to military control (RMC), and confinement from 14 May 1973 to 4 December 1973:

- AWOL to RMC, 14 May 1973 to 29 May 1973
- AWOL to RMC, 4 June 1973 to 17 June 1973
- AWOL to RMC, 13 July 1973 to 3 August 1973,
- Confinement, 9 August 1973 to 21 September 1973
- AWOL to ACA, 23 October 1973 to 28 November 1973
- RMC, 4 December 1973

b. The applicant's SSN appears as [REDACTED] on all five documents.

5. Court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ). However, the relevant DD Form 458 (Charge Sheet) is not available for review.

6. On 13 December 1973, the applicant consulted with legal counsel and was advised of the basis for his contemplated trial by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge, the effects of his request for discharge, and the rights available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, (Discharge for the Good of the Service in Lieu of Trial by Court-Martial). In his request for discharge, he acknowledged he was not subject to coercion, and he was advised of the implications attached to his request. He understood that if his request for discharge was accepted, he may be discharged with a characterization of service under other than honorable conditions and furnished an Undesirable Discharge Certificate. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he

could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

b. He elected to submit a statement in his own behalf. He endorsed this document with his SSN shown as [REDACTED].

c. In his statement, the applicant stated he could not adjust to the Army way of life and went AWOL to go home and help his mother and father. The Army made him nervous, and he believed he would have a nervous breakdown. He could not take being in the Army anymore because he liked being on his own, doing what he wanted to do when he wanted to, and was tired of people telling him what to do. He asked his command to grant him his request for an undesirable discharge or any other discharge just as long as he could get out. If his command disapproved his discharge, he would go AWOL again.

7. The applicant's chain of command recommended approval of the applicant's request for discharge and the issuance of an undesirable discharge.

8. On 21 December 1973, the separation authority approved the applicant's request for discharge for the good of the service – in lieu of trial by court-martial, and directed the issuance of an undesirable discharge. He further directed the applicant's reduction to private/E1.

9. The applicant was discharged accordingly on 28 December 1973, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial, with an UOTHC characterization of service in the grade of E-1. He received a separation program designator code of 246 and a reenlistment code of RE-3B and RE-4. He was credited with 11 months and 9 days of net active service and had 150 days of lost time during the period covered. His DD Form 214 shows his SSN as [REDACTED].

10. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

11. The applicant provides a copy of his Social Security card, which shows his SSN as [REDACTED]

12. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, 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.

2. Regarding the SSN recorded on his DD Form 214, the Board noted it is the same as the SSN recorded throughout his military service record, and the SSN he states is correct was not a matter of record at any time during his military service. The Board found insufficient evidence of mitigating factors that would support changing an entry on the DD Form 214 that accurately reflects the data that was available at the time the form was completed. The Board determined the SSN on the applicant's DD Form 214 should not be changed.

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, 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. AR 635-5 (Personnel Separations - Separation Documents), in effect at the time, prescribed the separation documents that were prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. It established standardized policy for preparing and distributing DD Form 214. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form be complete and accurate, reflective of the conditions as they existed at the time of separation.

3. Army Regulation 635-200, in effect at the time, set forth the primary authority for separating enlisted personnel.

a. Chapter 10 states in part, a member who has committed an offense or offenses, the punishment for any of which, under the UCMJ and the Manual for Court-Martial, include bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. In addition, the request for discharge may be submitted at any stage in the processing of the charges until the court-martial convening authority's final action on the case. Commanders will also ensure that a member will not be coerced into submitting a request for discharge in lieu of trial by court-martial. The

member will be given a reasonable time (not less than 72 hours) to consult with a consulting counsel and to consider the wisdom of submitting such a request for discharge.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. An UOTHC discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and in lieu of trial by court-martial.

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.

a. This guidance does not mandate relief but 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//