

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 May 2024

DOCKET NUMBER: AR20230011483

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions to honorable
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Letter of Appreciation, dated 21 August 1972

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 he did the majority of his service with no issues. He regrets the choice that he made and is hoping to have this minor infraction be reconsidered and his DD Form 214 (Report of Separation from Active Duty) changed. He recognizes that he was just a kid at the time and he has never been in trouble since.
3. On 30 November 1971, the applicant enlisted in the Regular Army.
4. His DA Form 2-1 (Personnel Qualification Record – Part II) shows the applicant served in Thailand from 5 May 1972 to 2 May 1973 (12 months).
5. On 31 August 1973, he accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ), for absenting himself from his unit from 15 August 1973 to 23 August 1973. His punishment included reduction to private/E-2 (suspended 30 days).

6. On 6 February 1974, he accepted NJP under Article 15, UCMJ, for absenting himself from his unit from 19 December 1973 to 26 December 1973. His punishment included reduction to private/E-2 (suspended 90 days).

7. On 10 June 1974, he accepted NJP under Article 15, UCMJ, for failing to go at the time prescribed to his appointed place of duty on 3 June 1974, absent without leave (AWOL) from 8 August 1974 to 12 August 1974, AWOL from 15 August 1974 to 22 August 1974, failure to go to his appointed place of duty on 30 August 1974 and 4 September 1974. His punishment included reduction to private/E-2 (suspended 90 days).

8. On 7 October 1974, he accepted NJP under Article 15, UCMJ, for failing to go at the time prescribed to his appointed place of duty on 20 June 1974. His punishment included reduction to private/E-2; It was further reported on 4 November 1974 the applicant failed to go at the time prescribed to his appointed place of duty.

9. On 8 November 1974, he accepted NJP under Article 15, UCMJ, for disobeying a lawful order on 4 November 1974. It was further reported on 7 November 1974 the applicant failed to go at the time prescribed to his appointed place of duty.

10. On 12 November 1974, he accepted NJP under Article 15, UCMJ for disobeying a lawful order on 7 November 1974.

11. The applicant's duty status changed on:

- 13 November 1974, from present for duty to AWOL
- 19 November 1974, from AWOL to present for duty

12. On 21 November 1974, he accepted NJP under Article 15, UCMJ for failure to go at the time prescribed to his appointed place of duty on 11 November 1974.

13. The applicant's duty status changed on:

- 22 November 1974, from present for duty to AWOL
- 26 November 1974, from AWOL to present for duty
- 27 November 1974, from present for duty to AWOL
- 5 December 1974, from AWOL to present for duty
- 9 December 1974, from present for duty to AWOL

14. On 12 December 1974, the applicant's duty status changed from AWOL to Civilian Confinement. The DA Form 4187 (Personnel Action) shows the applicant was apprehended and taken to P\_\_\_\_\_ County Jail, N.C., and charged with possession and the intent to distribute drugs; \$3,000 bond, with a trial date on 20 January 1975.

15. A U.S. Department of Justice, Federal Bureau of Investigation, Identification Form, dated 4 March 1975, shows in part, the applicant was arrested on 30 January 1975, charged with larceny, and convicted with a 12-month confinement.

16. A memorandum, issued by Department of the Army, U.S. Army Enlisted Records Center, dated 6 August 1975, which shows in part, restore the [applicant] to the rolls of an organization IAW Chapter 1, Section III, and Chapter IV, Army Regulation 630-10.

17. A memorandum, signed by the commanding officer, dated 19 August 1975, which shows in part, upon determination of action to be taken, request this correspondence along with repost of such action be returned to this headquarters, no later than 26 September 1975.

18. Special Orders Number 164, issued by U.S. Army Transportation Center and Fort Eustis, dated 22 August 1975, shows in part:

- Assigned to Headquarters, U.S. Army Transportation Center and Fort Eustis, (Transfer Point) Fort Eustis, VA
- Reporting date: 25 August 1975
- Special Instructions: Transfer to Transfer Point for purpose of separation
- Effective date of discharge: 25 August 1975
- Type of discharge: Under Other Than Honorable Conditions – DD Form 258A

19. The applicant was discharged from active duty on 25 August 1975 under the provisions of Army Regulation (AR) 635-206 (Personnel Separations – Discharge) section VI, with the issuance of an under other than honorable conditions characterization of service. His DD Form 214 shows:

- a. He completed 2 years, 10 months, and 21 days of active service.
- b. He was awarded or authorized the National Defense Service Medal, Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16).
- c. He was issued the Separation Code “JKB” and the Re-entry Code “4”.
- d. Dates of time lost during this period: 305 days lost under 10 USC 972 from 15 August to 22 August 1973; 17 December to 25 December 1973; 13 May to 14 May 1974; 8 August to 11 August 1974; 15 August to 21 August 1974; 13 November to 18 November 1974; 22 November to 25 November 1974; 27 November to 4 December 1974; 9 December to 11 December 1974; 12 December 1974 to 25 August 1975.

20. There is no indication that the applicant requested an upgrade of his discharge from the Army Discharge Review Board within its 15-year statute of limitations.

21. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief is not warranted.
2. The evidence of record and independent evidence provided by the applicant 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.
3. The applicant received multiple instances of nonjudicial punishment, there were too many instances of being absent without leave, and he spent 12 months in civil confinement for possession and the intent to distribute drugs. Additionally, while he alluded to post service accomplishments, he did not provide any evidence of specific post service accomplishment.

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, 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. Army Regulation 635-206 (Personnel Separations – Discharge), in effect at the time, states an individual will be considered for discharge when it is determined that he has been initially convicted by civil authorities.

3. Army Regulation 635-200 (Personnel Separations) currently in effect sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. A discharge under other than honorable conditions is normally appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. When a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade per Army Regulation 600–8–19.

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.

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/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.

5. Army Regulation 15-185 (Army Board for Correction of Military Records), paragraph 2-11, shows applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//