

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 May 2024

DOCKET NUMBER: AR20230011650

APPLICANT REQUESTS:

- correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to amend his separation program number (SPN)
- 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)
- Civilian Education Degree Certificates
- Private Investigator's License
- Employment Verification Statement AT&T

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 the SPN code does not reflect the correct reason for his separation. He says he was not under investigation at the time of separation and was not charged with any offenses or violations. He contends he requested separation due to safety concerns for himself and others. He stated he was attacked in the barracks by three individuals at the behest of a sergeant which almost started a race riot. Until February 2023, he was unaware of the review board process and procedures.
3. He enlisted in the Regular Army on 13 July 1971.
4. His service record presented the following actions of nonjudicial punishments:
  - 16 February 1973, violation of Article 134, possession of 5 grams of hash
  - 14 December 1973, violation of Article 91, disobeyed a noncommissioned officer (two specifications) and violation of Article 92, failed to sign in with CQ

- 22 July 1972, violation of Article 92, violation of a general regulation
- 17 April 1972, violation of Article 86, absent without leave (AWOL)
- 1 February 1972, violation of Article 86, AWOL

5. On 20 March 1973, court-martial charges were preferred against the applicant for the following charges and specifications:

a. Charge I – Violation of the UCMJ, Article 86

- Specification 1 – 0740 hours, 1 March 1973, without authority, fail to go at prescribed time to his appointed place of duty
- Specification 2 – 1300 hours, 1 March 1973, without authority, fail to go at prescribed time to his appointed place of duty

b. Charge II – Violation of the UCMJ, Article 90, Specification – 2 March 1973, willfully disobey a lawful command from superior commissioned officer.

c. Charge III – Violation of the UCMJ, Article 91, -Specification – 5 March 1973, willfully disobeyed a lawful order from his superior noncommissioned officer.

d. Charge IV – Violation of the UCMJ, Article 92, -Specification – 1 March 1973, he was derelict in the performance of his duties

6. On 30 April 1973, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of Chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:

- that he may be discharged under other than honorable conditions and furnished an Undesirable Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration
- he may be deprived of his rights and benefits as a veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life
- he did not submit statements on his own behalf

7. On 30 May 1973, the separation authority approved the applicant's request for discharge for the good of the service. He directed the applicant be discharged from the service under the provisions of Chapter 10-1, AR 635-200, SPN 246. A General Discharge Certificate, DD Form 257A, would be issued.

8. Special Orders 162, dated 11 June 1973, discharged the applicant from active duty with an effective date of 11 June 1973.

9. Special Orders 156, dated 5 June 1973, issued a General Discharge Certificate, DD Form 257A to applicant.

10. On 11 June 1973, he was discharged accordingly. His DD Form 214, for the period ending 11 June 1973, shows he completed 1 year, 10 months, and 29 days of active service, a SPN code of 246 and re-entry code of 3. It also shows he was awarded or authorized:

- Army Service Ribbon
- Marksman Marksmanship Badge (M16).

11. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations

12. The applicant provides a/an:

- Associate degree on Arts – Mt San Antonio College
- Bachelor degree of Arts – University of California
- Master degree of Public Administration – University of Southern California
- Private Investigator's License
- Employment Verification Statement from AT&T

13. By regulation, a member who has committed an offense or offenses, the punishment for any of which, under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other Than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

14. Also by regulation, a number used in statistical accounting to represent the specific authority and reason for separation is an SPN. SPN's are an integral part of the authority for separation shown in orders and on the DD Form 214. For enlisted personnel separated under the provisions of Chapter 10 of AR 635-200, SPN 246 would be assigned.

15. 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 Board carefully considered the applicant's request for correction of his DD Form 214 to amend his separation program number, the applicant's contentions, his military record, and the applicable regulatory guidance. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.

2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, 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 evidence of record shows the applicant was found in possession of hash, he had numerous failures to report and/or AWOLs, and there were instances disobeying noncommissioned officers.

a. The applicant's indiscipline resulted in court-martial charges being preferred against him. He voluntarily requested discharge in lieu of a trial by court-martial, and his request was approved.

b. This approval resulted in his issuance of a DD Form 214, which shows he discharged under the provisions of Army Regulation 635-200, Chapter 10, with a separation program number of 246, with an under honorable conditions (general) characterization of service.

c. The evidence of record shows the applicant's separation program number of 246, was appropriate for Soldiers separated under the provisions of Army Regulation 635200, chapter 10.

4. The Board noted the applicant's post service achievement and steady employment. His post service achievement is commendable but it does not change the underlying reason for his discharge, which is represented by his separation program number of 246.

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribes the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 3-7b (General Discharge) states 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 10 (Discharge in Lieu of Trial by Court-Martial) states a Soldier who has committed an offense or offense, the punishment for which, under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate, if such is merited by the Soldier's overall record during the current enlistment.

3. AR 600-200 (Enlisted Personnel Management System), in effect at the time, prescribes policies and procedures for career management of Army enlisted personnel. Paragraph 8-11 (Approved for Discharge from Service Under Other Than Honorable Conditions) states when the general court-martial authority determines that a Soldier is to be discharged from the service under other than honorable conditions, he will be reduced to the lowest enlisted grade. Board action is not required for this reduction. The commander having general court-martial jurisdiction will, when directing a discharge under other than honorable conditions, or when directed by higher authority, direct the Soldier be reduced to private, E-1.

4. AR 635-5 (Separation Documents) states a number used in statistical accounting to represent the specific authority and reason for separation is an SPN. SPN's are an

integral part of the authority for separation shown in orders and on the DD Form 214. For enlisted personnel separated under the provisions of Chapter 10 of AR 635-200, SPN 246 would be assigned.

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/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 based on 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//