

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 February 2025

DOCKET NUMBER: AR20230011724

APPLICANT REQUESTS: correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the period ending 14 April 1966, by removing the entries from Item 26a (Non-Pay Periods Time Lost).

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- DD Form 214

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 24 days of lost time should be reinstated and removed from his record, because he was found not guilty of being drunk on duty under Article 15, of the Uniform Code of Military Justice (UCMJ)).
3. A review of the applicant's service record shows:
 - a. On 2 December 1965, the applicant underwent an initial enlistment examination wherein he noted he never used drugs.
 - b. On 4 February 1966, the applicant was inducted into the Army of the United States.
 - c. On 10 February 1966, the applicant underwent a mental hygiene consult, wherein the medical providers noted the applicant admitted to the "use of habit-forming drugs "off and on" for the past four years and further states that for the past year he has needed and used habit-forming drugs constantly." He was mentally responsible, able to distinguish right from wrong and to adhere to the right and had the mental capacity to

understand and participate in board proceedings. He had no mental disease or defect sufficient to warrant disposition through medical channels. His condition was not amenable to treatment, counseling, disciplinary action, transfer or change of duty.

d. Item 44 (Time Lost under Section 972, Title 10, U.S. Code, and Subsequent to Normal Date Expiration of Term of Service) of his DA Form 20 (Enlisted Qualification Record) shows he had lost time from 12 February 1966 through 6 March 1966 (23 days of confinement).

e. On 24 February 1966, the applicant's commander notified the applicant of his intent to initiate action to separate him prior to his normal expiration term of service (ETS) under the provisions Army Regulation 635-206 (Discharge – Misconduct (Fraudulent Entry, Conviction by Civil Court, and AWOL or Desertion)) based on his concealment of disqualification that would have made him ineligible for induction.

f. On 11 March 1966, the applicant completed a DA Form 19-24, wherein he acknowledged the charge of fraudulent entry and noted he had used drugs since age 15 and did not desire to remain in the Army.

g. On 14 March 1966, court-martial charges were preferred against the applicant for violations of the UCMJ. Special Court-Martial Order Number 45 shows he was found not guilty of being drunk on duty on or about 12 February 1966.

h. His DA Form 20 also shows in item 44 that he had lost time from 26 March 1966 through 26 March 1966 (1 day of absence without leave).

i. On 30 March 1966, the applicant consulted with legal counsel and acknowledged receipt of the commander's proposed separation memorandum. Additionally, he stated he had been notified and acknowledged that he could be discharged under the provisions of Army Regulation 635-206 based on his concealment of a disqualification that would have made him ineligible for induction.

j. The applicant was discharged UOTHC on 14 April 1966 under the provisions of Army Regulation 635-206 (Discharge – Misconduct (Fraudulent Entry, Conviction by Civil Court, and AWOL or Desertion)) and assigned separation program number 280 (misconduct fraudulent entry). He was discharged in the lowest enlisted grade. He was not credited with completing any service due to his fraudulent entry. Item 32 (Remarks) of his DD Form 214 shows 24 days of lost time under Title 10, U.S. Code, section 972, from 12 February 1966 through 6 March 1966 and 26 March 1966 through 26 March 1966.

4. On 26 October 1973, the applicant appeared before the Army Discharge Review Board for a review of his discharge. The Board determined his service characterization

was inequitable and granted relief in the form of an upgrade of his service characterization to under honorable conditions (General). He was issued a new DD Form 214 showing his lost time in Item 26a.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation.

a. The applicant was inducted into the Army of the United States (AUS) on 4 February 1966 following an enlistment examination on 2 December 1965, during which they stated they had not used drugs. However, shortly after induction, a Mental Hygiene Consultation on 10 February 1966 indicated a history of habit-forming drug use over the previous four years. This discrepancy led to the initiation of separation proceedings for fraudulent entry on 24 February 1966.

b. The applicant acknowledged fraudulent entry and drug use on 11 March 1966. While court-martial charges were preferred on 14 March 1966 for being drunk on duty, the applicant was found not guilty. Ultimately, the applicant was discharged on 14 April 1966 under Other Than Honorable (OTH) conditions, with 24 days of lost time and no credited service.

c. On 26 October 1973, the Army Discharge Review Board (ADRB) upgraded the applicant's discharge to General Under Honorable Conditions, recognizing mitigating circumstances surrounding the applicant's entry and service. Given this prior upgrade and the applicant's circumstances at the time of induction—including the apparent lack of intent to deceive and the rapid initiation of separation as well as the not guilty finding of the court martial—the Board finds that further relief is warranted.

Recommendation: The Board recommends that the applicant's record be amended to remove the entries from Item 26a (Non-Pay Periods Time Lost).

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:XX	:XX	:XX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 14 April 1966 by removing the entries from Item 26a (Non-Pay Periods Time Lost).

X

//signed//

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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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 3-7b provides that 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.

3. Army Regulation 635-206, in effect at the time, provided the authority for the administrative separation or retention of enlisted personnel who had committed an act and or acts of misconduct. Section VI of that regulation prescribed the standards and procedures for processing cases of individuals who, during their current term of active military service, had been convicted by a civil court. An undesirable (UOTHC) discharge was normally considered appropriate for members separating under this provision of the regulation; however, the separation authority could issue an honorable or a general discharge if warranted by the member's overall record of service.

4. Army Regulation 635-5 (Separation Documents) establishes the standardized policy for preparing and distributing the DD Form 214. The DD Form 214 is a summary of a Soldier's most recent period of continuous active duty and provides the individual with documentary evidence of their military service. The regulation requires that the dates of time lost during the current enlistment will be entered on the DD Form 214:

a. Item 26a of the version in effect at the time shows time lost under Title 10, U.S. Code, section 972.

b. For enlisted personnel, the inclusive periods of time lost to be made good under Title 10, U.S. Code, section 972, and periods of non-inclusive time after ETS will be entered. Lost time under Title 10, U.S. Code, section 972 is not creditable service for pay, retirement, or veteran's benefits; however, the Army preserves a record of it (even

after it has been made up) to explain which service between the date of entry on active duty and the date of separation is creditable service.

//NOTHING FOLLOWS//