

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 July 2024

DOCKET NUMBER: AR20230012260

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

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record).

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 would like his under other than honorable discharge upgraded to honorable conditions. The applicant noted during his military service he was granted ten days leave. He went home to the Navajo Nation and found out his daughter was born. He extended his leave and later was considered absent without leave (AWOL). He does not recall the dates, nor does he have any records since they were lost when his storage shack burned down. He further believes he duly served his country for three years and accomplished his duties even though he was given an undesirable character of discharge. He deserves an upgrade and has been working with the Department of Veterans Affairs (VA) to submit the request.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 31 August 1972.
 - b. He accepted nonjudicial punishment on three separate occasions:
 - 16 March 1973 – one specification of being absent without leave (AWOL) from approximately 12 March 1973 to 16 March 1973
 - 23 May 1973 – AWOL from approximately 20 May 1973 to 22 May 1973

- 11 June 1973 – AWOL from approximately 29 May 1973 to 3 June 1973 and breaking restriction; his punishment included reduction to private (PVT)/E-1

c. On 4 June 1973, the applicant underwent a psychiatric evaluation. The psychiatrist noted it was the applicant's second admission to the Alcohol Abuse Rehabilitation Program (AARP) and he had a history of two prior Article 15s for being absent without leave (AWOL) and intoxicated. The applicant indicated he desired to remain in the Army and desired one more chance to perform. He was psychiatrically cleared for any and all administrative actions, to include an expeditious separation if disciplinary problems continued.

d. On 22 August 1973, he was convicted by a special court martial for one specification of being AWOL from 25 June 1973 to 29 June 1973, one specification of failure to obey a lawful order from a superior commissioned officer, and one specification of breaking restriction. His sentence included confinement at hard labor for 80 days, reduction to the grade of private, E-1, and forfeiture of \$75.00 pay per month for two months.

e. On 10 September 1973, the convening authority approved the sentence and ordered it duty executed.

f. A DD Form 458 (Charge Sheet) shows on 18 May 1976, court-martial charges were preferred on the applicant for two specifications of AWOL between on or about 10 December 1973 and 6 August 1974 and from on or about 17 October 1974 to 17 May 1976.

g. The service record includes the applicant's medical evaluations, dated 19 May 1976, for the purpose of separation wherein he indicated he was generally in good health. The applicant was marked qualified for release from active duty.

- Standard Form (SF) 88 (Report of Medical Examination)
- SF 93 (Report of Medical History)

h. On 21 May 1976, the applicant consulted with legal counsel and requested a discharge for the Good of the Service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- he was making the request of his own free will
- maximum punishment
- he was guilty of at least one or more of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service

- if his request for discharge was accepted, he may be discharged under other conditions other than honorable
- 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

i. On 4 June 1976, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge for the good of the service under the provisions of AR 635-200, Chapter 10. He would be issued an Undesirable Discharge Certificate and reduced to the lowest enlisted grade.

j. On 24 June 1976, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Report of Separation from Active Duty) shows he completed 1 year, 4 months, and 17 days of active service. He was assigned separation code KFS and with reentry code 4. It also shows he was awarded or authorized:

- National Defense Service Medal
- Armed Forces Expeditionary Medal
- Sharpshooter (Rifle)

4. On 25 May 1984, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

5. By regulation (AR 635-5), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

6. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, 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 or in lieu of trial by court-martial.

7. 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. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical review, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of numerous occasions being AWOL for a total of 887 days.

2. The Board noted, the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a honorable discharge. Based on the preponderance of evidence, the Board denied relief.

3. This board is not an investigative body. The Board determined despite the absence of the applicant's records, they agreed the burden of proof rest on the applicant, however, he did not provide any supporting documentation and his service record has insufficient evidence to support the applicant contentions that he was on an authorized leave and his discharge warranted an upgrade.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. An honorable discharge is a separation with honor. 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge 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.

3. 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//