

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 June 2024

DOCKET NUMBER: AR20230012359

APPLICANT REQUESTS: an upgrade of his characterization of service from under conditions other than honorable to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 12 August 2023
- self-authored statement, 9 October 2023
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 29 April 1970
- correspondence to the Department of Veterans Affairs and National Personnel Records Center (NPRC), 18 November 2022
- NPRC correspondence, 2 August 2023

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, in effect, he was young and made a stupid decision to go absent without leave (AWOL). He is now 72 years old and does not want his family and friends to know he received a discharge under conditions other than honorable. He was proud to have served his country and does not want to die with a bad record.
3. The applicant enlisted in the Regular Army on 17 February 1969 for a 3-year period. He was awarded military occupational specialty 63B (mechanic).
4. A DA Form 19-32 (Military Police Report) shows the applicant went AWOL on or about 13 July 1969. He was apprehended on 5 September 1969 and placed in pretrial confinement.
5. Court-martial charges were preferred against the applicant on 10 September 1969, for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458

(Charge Sheet) shows he was charged with one specification of being AWOL from on or about 13 July 1969 and remaining AWOL until on or about 5 September 1969. The applicant's commander recommended him for trial by special court-martial.

6. Special Court-Martial Order Number 2620, issued by Headquarters, Special Processing Battalion, dated 23 September 1969, shows on 12 September 1969, the applicant was arraigned, tried, and found guilty of violation of the UCMJ, Article 86 for going AWOL on or about 13 July 1969 and remaining AWOL until on or about 5 September 1969. He was sentenced to hard labor without confinement for one month, restriction for two months, and forfeiture of \$25.00 for two months. The sentence was adjudged on 17 September 1969 and ordered to be duly executed on 23 September 1969.

7. Although the record does not contain a second charge sheet, his DD Form 214 shows he had a second period of lost time from 2 October 1969 through 14 April 1970.

8. On 21 April 1970, the applicant consulted with legal counsel and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service in Lieu of Trial by Court-Martial). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an under other than honorable conditions discharge, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected not to submit a statement in his own behalf.

9. The applicant's intermediate commander recommended approval and issuance of an Undesirable Discharge Certificate on 22 April 1970 and the separation authority approved the applicant's request for discharge for the good of the service on 29 April 1970, with reduction to the lowest enlisted grade.

10. The applicant was discharged accordingly on 29 April 1970, under the provisions of AR 635-200, Chapter 10, for the good of the service. His DD Form 214 confirms his service was characterized as under conditions other than honorable. He was credited with 5 months, and 22 days of net active service this period, with 261 days lost.

11. The applicant provides correspondence to the VA and NPRC requesting upgrade of his discharge to honorable.

12. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An under other than honorable conditions (UOTHC) characterization of service is normally considered appropriate.

13. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

BOARD DISCUSSION:

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.

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.

12/19/2024

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. Army Regulation (AR) 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, 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. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. 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.

c. 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. 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 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, Boards 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//