

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 July 2024

DOCKET NUMBER: AR20230012856

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general)

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

- DD Form 149 (Application for Correction of Military Record)
- VA Form 21-4138 (Statement in Support of Claim)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 8 April 1970

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 discovered he could request an upgrade of his discharge when he visited a Veteran Service Office and was while he was reviewing his DD Form 214 for benefits. While he was stationed at Fort Polk, Louisiana for his basic training and advanced individual training (AIT), his father was placed in the Department of Veterans Affairs (VA) hospital in Pineville, Louisiana.

a. His older brother was in the Navy and all his other siblings were too young to have driver's license. He had just turned twenty, when he entered basic training. He was almost done with his AIT when he received word of his dad's illness in the VA hospital and he went to see him. He believed, at the time, that his dad would not survive. His dad subsequently passed away in 1973.

b. He needed to be home to help care for his dad and was too young and naive to realize the proper channels to request a hardship discharge so he just went absent without leave (AWOL). If he could go back in time, he would use the proper channels to request a hardship discharge or an extended leave to care for his dad and family. His parents had ten kids. The two older brothers were in the military, his two younger

brothers and three younger sisters were still in school. His two older sisters were at the house working chores, but he had to step up to be the man of the house because of his father's health conditions.

3. The applicant's service record contains the following documents:

a. DD Form 47 (Record of Induction) shows he was inducted into the Army on 6 January 1969.

b. DA Form 20 (Enlisted Qualification Record) shows in item 44 (Time Lost) he had lost time from:

- 18 April 1969 through 19 April 1969, 2 days, AWOL
- 29 April 1969 through 8 September 1969, 133 days, AWOL
- 9 September 1969 through 2 October 1969, 24 days, Confinement
- 3 October 1969 through 20 January 1970, 110 days, AWOL
- 21 January 1969 through 3 March 1970, 42 days, Confinement
- 4 March 1970 through 8 March 1970, 5 days, AWOL
- 13 March 1970 through 7 April 1970, 26 days, Confinement

c. DD Form 493 (Extract of Military Record of Previous Convictions) shows the applicant was found guilty at the following Special Courts-Martial on:

(1) 18 September 1969 for AWOL, on or about 29 April 1969 until on or about 8 September 1969. His sentence was confinement for five months and forfeiture of \$50.00 per month for five months. The sentence was approved on 23 September 1969.

(2) 3 March 1970 for escaping from lawful confinement on or about 3 October 1969 and AWOL from on or about 3 October 1969 through on or about 20 January 1970. His sentence was confinement for six months and forfeiture of \$76 per month for six months. The sentence was approved on 11 March 1970.

d. DA Form 2627 (Record of Proceeding Under Article 15, Uniform Code of Military Justice), 17 March 1969, shows he accepted nonjudicial punishment for AWOL from on or about 15 March 1969 to on or about 16 March 1969. His punishment included forfeiture of \$17.00 per month for one month, restriction for 14 days and extra duty for seven days. He did not appeal his punishment.

e. Letter from the Federal Bureau of Investigation, 9 September 1969, shows he had been apprehended, located, or his status had otherwise been cleared. He was located by the Caldwell Parish Sheriff's Office on 8 September 1969 and was confined at the Caldwell Parish Jail. The DD Form 616 (Report of Return of Absentee), 10 September 1969, shows he was returned to military control on 9 September 1969.

His date of absence was 29 April 1969. Another DD Form 616, dated 16 February 1970, shows he returned to military control on 20 January 1970. His date of absence was 3 October 1969.

f. Memorandum Notification of Proposed Separation, 30 March 1970, shows he was advised he was being recommended for separation for unfitness. On the same day, he submitted an election of rights where he acknowledged he had been notified of the pending separation action against him and had been advised of the basis for the contemplated action, understood his available rights, waived consideration of his case before a board of officers, waived personal appearance before a board of officers, did not submit statements in his own behalf, waived representation by appointed counsel, and waived the 48 hours waiting period.

g. Mental Hygiene Consultation Service Certificate, 1 April 1970, states in pertinent part, there were no disqualifying mental defects to warrant disposition through medical channels. The applicant 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. Separation was recommended as he showed no potential for rehabilitation or retention in a military setting.

h. Self-authored affidavit, 1 April 1970, stated he was inducted into the Army on 6 January 1969. After completion of basic training, he went to AIT. He went AWOL on 18 April 1969 and was returned the following day. He went AWOL again on 29 April 1969 and remained absent until 8 September 1969. He was then placed in confinement on 9 September 1969 and escaped on 3 October 1969. He remained AWOL until 20 January 1970 when he was picked up and returned to the post stockade the following day. He escaped from confinement again on 4 March 1970. He remained AWOL until 8 March 1970. He was again placed in confinement on 13 March 1970, where he remained on the date of the affidavit.

i. His chain of command recommended he be separated from the Army with an undesirable (UOTHC) discharge. On 6 April 1970, the appropriate approval authority approved his separation from the Army for unfitness with an undesirable discharge.

j. On 8 April 1970, he was discharged accordingly. His DD Form 214 shows his separation code was 26B, his character of service was UOTHC, with a reentry code of 3. His grade/rank was listed as a private/E-1. He had completed 3 months and 25 days of service. He awarded the National Defense Service Medal.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant exhibited a pattern of misconduct consisting of multiple instances of AWOL, NJP, and court-martial convictions. As a result, his command initiated separation action against him for unfitness. He was separated with an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that 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.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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 635-212 (Personnel Separations - Discharge - Unfitness and Unsuitability), set forth the policy for administrative separation for Soldiers due to unfitness. It provided that Soldiers would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay just debts. This regulation also prescribed that an undesirable discharge was normally issued unless the particular circumstances warranted otherwise.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, provides for the separation of enlisted personnel, it states:

a. An honorable discharge is a separation with honor. Issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty during the member's current enlistment or current period of service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability and has been cooperative and conscientious in doing his assigned tasks, he may be furnished an honorable discharge.

b. A general discharge is a separation from the Army under honorable conditions of an individual whose military record is not sufficiently meritorious to warrant an honorable discharge. When a member's service is characterized as general, except when discharged by reason of misconduct, unfitness, unsuitability, homosexuality, or security, the specific basis for such separation will be included in the individual's military personnel record. A general discharge may be issued if an individual has been convicted of an offense by a General Court-Martial or has been convicted by more than one special court-martial in the current enlistment period or obligated service or any extension thereof. The decision is discretionary; if there is evidence that the individual's military behavior has been proper over a reasonable period of time subsequent to the conviction(s), he may be considered for an honorable discharge.

c. An undesirable discharge (UOTHC) is an administrative separation from the service under conditions other than honorable. It may be issued for unfitness,

misconduct, homosexuality, or for security reasons. Whenever an undesirable discharge is authorized by regulation, a member may be awarded either an honorable or general discharge if, during the current or a prior enlistment or period of service or voluntary or involuntary extension of either, he has been awarded a personal decoration, or if warranted by the particular circumstances of a specific case.

4. AR 635-5 (Personnel Separation – Separation Documents), in effect at the time, prescribed the separation documents that will be furnished each individual who is separated from the Army, including active duty for training personnel, and established standardized procedures for the preparation and distribution of these documents. It stated that SPN 28B was designated under the authority of AR 635-212 for unfit – frequent involvement in incidents of a discreditable nature with civil or military authorities.

5. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

6. 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.

//NOTHING FOLLOWS//