

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 June 2024

DOCKET NUMBER: AR20230013149

APPLICANT REQUESTS: his under other than honorable conditions (UOTHC) discharge be upgraded to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the United States Transfer or Discharge)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 was given an UOTHC discharge because of an offense while serving in the military. He was denied leave to attend his grandmother's funeral and felt he was denied on purpose and with no explanation as to why he was denied.
3. The applicant's records were not available for review; however, the Army Discharge Review Board (ADRB) case report and his DD Form 214 were available for use.
4. The applicant was inducted into the Army of the United States on 2 March 1955. His military occupational specialty was 140 (Field Artillery Basic).
5. Before a summary court martial on 16 January 1956 the applicant was found guilty of operating a passenger car in a reckless manner on or about 30 December 1955. The court sentenced him to forfeiture of \$55.00 pay for one month.
6. The applicant was absent without leave (AWOL) on 10 February 1956 to on or about 14 February 1956. He received unit punishment on 16 February 1956 for breaking administrative restriction. His punishment was extra duty.

7. Before a summary court martial on 4 April 1956 the applicant was found guilty of AWOL from on or about 3 April 1956 at 1330 hours to on or about 1700 hours on 3 April 1956. The court sentenced him to reduction to private/E-1, restriction, and forfeiture of \$40.00 for one month.

8. Before a special court martial on 26 July 1956 the applicant was found guilty of AWOL on or about 8 June 1956 to on or about 28 June 1956. Having been placed under arrest the applicant broke said arrest on or about 8 June 1956. The court sentenced him to confinement at hard labor for six months and \$55.00 per month for six months. The unexecuted portion to confinement and forfeiture was remitted on 26 December 1956.

9. The applicant's commander requested the applicant's discharge on 14 November 1956 under the provisions of Army Regulation (AR) 635-208 (Personnel Separations-Discharge-Undesirable Habits and Traits of Character) for unfitness because the applicant was continually in some kind of trouble with officers or noncommissioned officers for failure to work properly, uniform violations, loafing, other discrepancies of this nature and not aligning with the remaining people in his section.

10. On 21 November 1956, a separation board convened, the applicant did not desire counsel. The board recommended an undesirable discharge because of the applicant's UOTHC character and his evidence of misconduct, and repeatedly committing petty offenses not warranting trial by court martial. The action was approved on 7 December 1956.

11. Medical records show on 24 August 1956, syphilis, congenital, line of duty no, existed prior to service. Final physical on 12 December 1956.

a. The applicant had a venereal disease several times during the past few years. The neuropsychiatric diagnosis shows passive aggressive reaction. The applicant was low intelligence manifested by misbehavior, disrespect, and AWOL.

b. There was no neuropsychiatric disease present and there were no disqualifying mental or physical defects sufficient to warrant discharge through medical channel. He was mentally responsible, able to distinguish right from wrong, adhere to the right and cooperate in his own defense.

12. A Certification of Military Service certificate shows the applicant's service was terminated by an undesirable discharge.

13. The applicant was discharged on 28 December 1956. His DD Form 214 shows he was discharged under the provisions of AR 635-208, with Separation Program Number 286 (unfitness, frequent incidents of a discreditable nature with civil or military

authorities). His service was characterized as UOTHC. He completed 1 year and 3 months of net active service. He had 207 days of lost time.

14. The applicant provides a copy of his DD Form 214 discussed above.

15. On 2 February 1962, the ADRB determined the applicant was properly and equitably discharged.

16. On 10 February 2014, the National Archives and Records Administration notified the ABCMR the applicants records were unavailable. The ABCMR notified the applicant they could not make a fair, impartial, and equitable determination of facts without his official records and based on this information, closed his case.

17. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

#### 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 applicant was discharged for unfitness following two NJPs and three convictions by a court-martial. His chain of command noted he was continually in trouble with officers or NCOs for failure to work properly, uniform violations, loafing, other discrepancies of this nature and not aligning with the remaining people in his section. An administrative separation board recommended an undesirable discharge because of the applicant's misconduct, and repeatedly committing petty offenses not warranting trial by court martial. He received an under other than honorable conditions characterization of service. The Board found no error or injustice in his available 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 and reason for separation the applicant received upon separation were 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.

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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, USC, 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. AR 635-208 in effect at the time, provided guidance and procedures in the elimination from the service of enlisted personnel having undesirable habits and traits of character. When discharge because of undesirable habits or traits of character, a DD Form 258A (Undesirable Discharge Certificate) would be furnished.

Recommendation for discharge because of undesirability would be made in the case of an enlisted person who:

- gave evidence of habits and traits of character manifested by antisocial or amoral trend, chronic alcoholism, criminalism, drug addiction, pathological lying, or misconduct
- possessed unclean habits, including repeated venereal infections
- repeatedly committed petty offenses not warranting trial by courts-martial
- was a habitual shirker
- was recommended for discharge by a disposition or other board of medical officers because he possesses a psychopathic (antisocial) personality disorder or defect not classified as a disease by the board
- demonstrated behavior, participates in activities, or associations which tend to show he is not reliable

3. AR 635-208, in effect at the time, set forth the basic authority for the separation of enlisted personnel for unfitness. The regulation provided for the discharge of individuals by reason of unfitness with an undesirable discharge when it had been determined that an individual's military record was characterized by one of more of the following: frequent incidents of a discreditable nature with civil or military authorities; sexual perversion; drug addiction or the unauthorized use or possession of habit forming narcotic drugs or marijuana; an established pattern for shirking; or an established pattern showing dishonorable failure to pay just debts.

4. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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. 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 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered

appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//