

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 June 2024

DOCKET NUMBER: AR20230013374

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) character of service 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 (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 would like his character of service upgraded to honorable to obtain medical treatment from the Department of Veterans Affairs for physical injuries sustained during his period of service.
3. The applicant enlisted in the Regular Army on 21 February 1968 for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 76Q (Special Purpose Repair Parts Specialist). The highest rank he attained was specialist fourth class/E-4.
4. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on three occasions:
 - a. On 6 March 1968, for being absent without authority (AWOL) and breaking restriction, on or about 6 March 1968. His punishment consisted of forfeiture of \$22.00 pay and seven days of extra duty.
 - b. On 13 May 1969, for being AWOL, from on or about 28 April 1969 until on or about 6 May 1969. His punishment consisted of reduction to private first class/E-3 and 15 days of extra duty.

c. On 10 June 1969, for failure to go at the time prescribed to his appointed place of duty, on or about 8 June 1969. His punishment consisted of reduction to private/E-2.

5. On 24 June 1970, the applicant requested a waiver of his 21 days of lost time, due to AWOL, for the purpose of immediate reenlistment. The applicant stated at the time he went AWOL, he was having marital difficulties and believed he was acting in good judgement. The waiver was approved on 13 July 1970.

6. A DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows the applicant was honorably discharged on 20 July 1970 for the purpose of immediate reenlistment. He was credited with 2 years, 4 months, and 8 days of net active service this period. The applicant subsequently reenlisted on 21 July 1970.

7. Court-martial charges were preferred against the applicant on 29 November 1971 for a violation of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows the applicant was charged with being AWOL from on or about 6 May 1971 until on or about 24 November 1971.

8. The applicant consulted with legal counsel on 7 December 1971.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, for the good of the service, under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In his request for discharge, he acknowledged making this request free of coercion. He further acknowledged understanding that if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

c. He was advised he could submit any statements he desired in his own behalf. In an interview conducted on 30 November 1971, the applicant stated, in effect, he enlisted in the Army at the age of 17 and was married several months later. He was the father of two boys. While stationed at Fort Hood, TX, he had personal problems which prompted him to go AWOL. His mother was paralyzed on her left side and needed personal attention. His wife was taking care of his mother and was unable to work. His stepfather died, and he went AWOL to work and help his wife and his mother.

9. The applicant underwent a mental status evaluation on 9 December 1971. The evaluating provider found no impression of significant mental illness, determined the applicant was able to distinguish right from wrong, and had the mental capacity to understand and participate in board proceedings.

10. The applicant's immediate and intermediate commanders recommended approval of his request for discharge for the good of the service and further recommended the issuance of an Undesirable Discharge Certificate.

11. The separation authority approved the applicant's request for discharge on 14 January 1972 and further directed the applicant be reduced to the lowest enlisted grade and issued a DD Form 258A (Undesirable Discharge Certificate).

12. On 4 February 1972, the applicant signed a statement of medical condition, stating there had been no change in his medical condition since his separation medical examination on 9 December 1971.

13. The applicant was discharged on 8 February 1972, under the provisions of AR 635-200, Chapter 10. His DD Form 214 and the corresponding DD Form 215 (Correction to DD Form 215) confirm his service was characterized as UOTHC. He was credited with 11 months and 26 days of net active service, with 202 days of lost time from 6 May 1971 to 23 November 1971.

14. The Army Discharge Review Board reviewed the applicant's request for a change in the type and nature of his discharge on or about 26 February 1988. After careful consideration, the Board determined the applicant was properly discharged. During the review process, several discrepancies were noted between his service records and discharge documents. He was issued a DD Form 215. The pertinent corrections are reflected in the paragraph above.

15. Administrative separations under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial. An UOTHC character of service is normally considered appropriate.

16. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

17. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, his previous ABCMR denial (9 October 1991, AC91-05639), the military electronic medical record (AHLTA), the VA electronic medical

record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 8 February 1972 discharge characterized an under conditions other than honorable so he may obtain medical care from the Veterans Hospital Administration for service incurred injuries.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of service under consideration shows he entered the regular Army on 21 July 1970 and was discharged on 8 February 1972 under the provisions provided in AR 635-200, Personnel Management – Enlisted Personnel. His separation program number of 246 denotes "Discharge for the Good of the Service."

d. The applicant received an Article 15 for a 1-day period of absence without leave and breaking restriction on 6 March 1968. He received a second on 13 May 1969 for being absent without leave from 28 April thru 6 May 1969. On 10 June 1969, he received another Article 15 for failure to repair.

e. He received a waiver to reenlist and did so 20 July 1970.

f. A Charge Sheet (DD for 458) shows he was charged with absence without leave from 6 May thru 24 November 1971.

g. On 7 December 1971, the applicant voluntarily requested discharge for the good of the service under provisions provided in chapter 10 of AR 635-200.

h. He underwent a pre-separation Mental Status Evaluation on 9 December 1971. The physician documented a normal examination. He stated the applicant had no mental illness, was able to distinguish right from wrong and adhere to the right, had the mental capacity to understand and participate in board proceedings, and met the medical retention standards in chapter 3 of AR 40-501, Standards of Medical Fitness.

i. His request was approved by the Commanding General of III Corps and Fort Hood on 14 January 1972 with the directive he be issued an undesirable discharge certificate and he be reduced in rank to Private E1.

j. There are no health records in JLV.

k. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's claim regarding injury received during service and the review and conclusions of the ARBA Medical Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding the absence of evidence of any mitigating medical conditions. 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, 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. Title 10, USC, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
3. 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.

4. 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//