

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 April 2025

DOCKET NUMBER: AR20230013556

APPLICANT REQUESTS: correction of his records to show he was separated due to a service-incurred medical disability.

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 is requesting compensation and correction of records due to an injury he sustained during service and continued without proper treatment resulting in lifelong disability and deafness. Because treatment was different during time of war, he was told that if he was not deployable, he would have to leave the service.
3. The applicant enlisted in the Regular Army on 2 October 1968.
4. On 11 June 1969, the applicant was found guilty was a special court-martial of being absent without leave (AWOL) 6 February to 25 February 1969 and from 5 March to 27 May 1969.
5. The applicant again departed AWOL on 20 June 1969 and remained AWOL until he was apprehended by civilian authorities on 13 September 1969.
6. Based on the applicant's AWOL offense, court-martial charges were preferred against him.
7. On 3 October 1969, the applicant consulted with legal counsel and voluntarily requested discharge for the good of the service, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, in lieu of trial by court-martial, based on the he charges preferred against him under the Uniform

Code of Military Justice (UCMJ) which authorized the imposition of a bad conduct or dishonorable discharge. In connection with his request, he acknowledged that:

- he had not been subjected to coercion with respect to his request for discharge
- he had been advised of the implications that were attached to it
- he could be discharged under other than honorable conditions and he could be ineligible for many or all benefits administered by the Department of Veterans Affairs (VA)
- he could be deprived of many or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he could expect to encounter substantial prejudice in civilian life by reason of an undesirable discharge

8. The applicant again departed AWOL on 13 October 1969.

9. On 6 October 1970, the separation authority approved the applicant's request for discharge and directed the issuance of an Undesirable Discharge Certificate (i.e. under conditions other than honorable). His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged on 6 October 1970 under the provisions of Army Regulation 635-200, chapter 10, with his service characterized as under conditions other than honorable.

10. 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, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or 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 in essence requesting a referral to the Disability Evaluation System (DES). He states:

“Compensation and correction of record due to injury occurring during service and continued with proper treatment resulting in lifelong disability and deafness.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The DD 214 for the period of Service under consideration

shows he entered the Regular Army on 1 October 1968 and was discharged 6 October 1970 under the provisions provided in chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel: Discharge for the Good of the Service. It shows 436 days lost under 10 USC § 972.

d. No medical documentation was submitted with the application. His service predates the EMR and he was not found in JLV.

e. It is the opinion of the ARBA medical advisor that a referral to the DES is not warranted.

f. 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:

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. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising opinion of the ARBA medical advisor that a referral to the DES is not warranted.

2. The Board finds insufficient justification to correct the applicant's military records to reflect a separation due to service-incurred medical disability. The applicant's record indicates a pattern of misconduct, including multiple periods of unauthorized absence and a conviction by special court-martial on 1 June 1969 for AWOL from 6 February to 25 February 1969 and from 5 March to 27 May 1969. Notably, he departed AWOL again on 20 June 1969 and remained absent until apprehended by civilian authorities on 13 September 1969. The Board noted, following these offenses, the applicant consulted legal counsel and voluntarily requested a discharge for the good of the service under Chapter 10, UCMJ, in lieu of trial by court-martial for the pending charges. Despite these proceedings, he again departed AWOL on 13 October 1969.

3. The Board found no evidence in the official record indicating that the applicant's conduct was caused or significantly influenced by a medical condition incurred during service. The voluntary nature of his request for discharge and repeated absences undermine any assertion that his separation was based on a service-connected disability. Therefore, the Board agreed, that the applicant's discharge was appropriate and consistent with the standards of the time, and there is no basis to amend his record to reflect separation due to medical disability.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//
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 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10, in effect at the time, provided that a member who committed an offense or offenses under the UCMJ, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service at any time after court-martial charges were preferred. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses, the type of discharge normally given under the provisions of this chapter, the loss of VA benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. An under other than honorable conditions (i.e., undesirable) discharge was normally considered appropriate.

3. Army Regulation 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his or her office, grade, rank, or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

4. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, states a A member who is charged with an offense for which he could be dismissed or given a punitive discharge may not be referred for disability processing. However, if the officer exercising appropriate court-martial jurisdiction dismisses the charge or refers it for trial to a court-martial which cannot adjudge such a sentence, the case may be referred for disability processing.

5. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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 ABCMR applicants (and/or their counsel) prior to adjudication.//NOTHING FOLLOWS//