

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 July 2024

DOCKET NUMBER: AR20230013765

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

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 14 September 2023
- DD Form 214 (Report of Separation from Active Duty) 27 July 1976
- Army Discharge Review Board (ADRB) Case, 12 June 1979

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, a request of an upgrade of his characterization of service is requested. He states this is a reconsideration of his case made by the Army Discharge Review Board.
3. The applicant was inducted in the Army of the United States on 19 January 1968. Upon completion of initial entry training, he was awarded military occupational specialty 11B (Light Weapons Infantryman). The highest rank he attained was private/E-2.
4. The applicant went absent without leave on or about 10 July 1968 and was dropped from the rolls on 10 August 1968. The relevant DD Form 3836 (Notice of Return of US Army Member from Unauthorized Absence) shows he surrendered to military authorities on 21 June 1976.
5. The applicant's service record is void of the complete facts and circumstances surrounding his discharge. However, a memorandum issued by Headquarters, XVIII Airborne Corps and Fort Bragg, Fort Bragg, NC on 27 July 1976, shows the applicant's reason for separation was due to conduct triable by court-martial, under the provisions

of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, with reenlistment code 3.

6. The applicant was discharged on 27 July 1976. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 10, and his character of service was under other than honorable conditions. He was credited with 6 months and 27 days of net active service with 550 days of lost time. He was assigned Separation Code 246 and Reenlistment Code 3. He was awarded or authorized the:

- National Defense Service Medal
- Sharpshooter Marksmanship Badge (M-14) Rifle
- Sharpshooter Marksmanship Badge (M-60) Machine Gun
- Expert Marksmanship Badge (M-16) Rifle

7. 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 a trial by court-martial. An under other than honorable conditions character of service is normally considered appropriate.

8. 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:

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's separation packet is not available for review. However, his DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 10, and his character of service was under other than honorable conditions. He was credited with 6 months and 27 days of net active service with 550 days of lost time. The ABCMR will decide cases on the evidence of record. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. 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, 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, in effect at the time, provided guidance for the administrative separation of enlisted personnel:

a. Chapter 10 of this regulation provided a member who has committed an offense or offenses, the punishment for which, under the UCMJ and the Manual for Courts-Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the Service. The discharge request may be submitted after court-martial charges are preferred against the member, or, until final action on the case by the court-martial convening authority. A member who is-under a suspended sentence of a punitive discharge may also submit a request for discharge for the good of the Service. An UOTHC discharge certificate normally is appropriate for a member who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated 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 there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member 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//