

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 July 2024

DOCKET NUMBER: AR20230014135

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to honorable.
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-Authored Letter dated 2 August 2023
- VA Form 21-526EZ (Notice to Veteran/Service Member of Evidence Necessary to Substantiate a Claim for Veterans Disability Compensation and Related Compensation Benefits)
- DA Form 2-1 (Personnel Qualification Record)
- DD Form 214 (Report of Separation from Active Duty) effective 27 November 1978

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 would like his under other than honorable discharge amended to reflect honorable. He contends that the service characterization on his DD Form 214 is unjust, as it was determined by a single isolated event during his military tenure.
 - a. The applicant further noted that he discovered his adoptive status during his early years. This revelation sent his life into a tailspin, leading him to make regrettable decisions, including prematurely leaving school. As he navigated through life, he sought avenues for self-improvement and betterment. Hailing from a family with a military

background, the applicant decided to enlist in the Army, viewing it as an opportunity to reset his life and serve his country.

b. As a young man looking for love and acceptance, he fell in love with a fellow service member's wife. When their affair was discovered, the applicant states he was threatened with imprisonment. Faced with this threat, the applicant went absent without leave (AWOL) to Alabama, where with the service member's wife followed. He was subsequently arrested and given a choice between incarceration or returning to the Army. The applicant states despite not fully understanding the consequences of his return, he chose to go back, hoping to continue his honorable service to his country. However, upon his return, the applicant states he was informed of his pending imprisonment, prompting him to go AWOL again. He was eventually apprehended and taken to Fort Campbell, KY, where he was given his DD Form 214 and discharge papers.

c. Reflecting on his actions as a young man he was unaware of the impact this negative discharge would have on his life. He is now applying to correct his past mistakes for all the right reasons. He expresses deep remorse for his actions and states that in the years following his enlistment, he has remained loyal and honorable to his country, family, and fellow man.

3. The applicant provides:

a. The below listed documents to be referenced in the service record:

- DA Form 2-1
- DD Form 214

b. A VA Form 21-526EZ outlines the details to submit a claim for Veterans disability compensation and related compensation benefits.

4. A review of the applicant's service record shows:

a. Having had prior service in the U.S. Army Reserve, he enlisted in the Regular Army on 30 December 1976.

b. On 26 May 1977, he accepted nonjudicial punishment (NJP) for one specification of larceny on or about 10 May 1977 by stealing an 8-track cassette tape player from a fellow service member.

c. On 17 April 1978, he accepted NJP for one specification of being AWOL from on or about 11 April 1978 to on or about 12 April 1978. His punishment included a suspended reduction of rank to private/E-2.

d. A DA Form 4187 (Personnel Action) shows the applicant's status changed from duty to AWOL/dropped from rolls (DFR) on 5 June 1978.

e. A second DA Form 4187 shows the applicant's status changed from DFR to attached. He was apprehended by civilian authorities in Alabama, and was returned to military control at the same location on 13 August 1978, pending determination of AWOL/DFR status from Fort Polk, LA.

f. The service record includes the applicant's medical examinations, dated 30 August 1978, for the purpose of separation which indicated he was generally in good health. The applicant was marked qualified for separation.

- Standard Form (SF) 88 (Report of Medical Examination)
- SF 93 (Report of Medical History)

g. A DD Form 458 (Charge Sheet) shows court-martial charges were preferred on the applicant for one specification of absenting himself from his organization on or about 5 June 1978, and did remain so absent until on or about 13 August 1978.

h. On 31 August 1978, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- he was making the request of his own free will
- maximum punishment
- he was guilty of the charge(s) against him or of (a) lesser included offense(s)
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration
- he may be deprived of his rights and benefits as a Veteran under both Federal and State Law
- he may expect to encounter substantial prejudice in civilian life

i. On 24 October 1978, the separation authority approved the applicant's request for discharge for the good of the service. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted grade.

j. He was discharged from active duty on 27 November 1978 with an under other than honorable conditions characterization of service under the provisions of AR 635-200, Chapter 10. His DD Form 214 shows he completed 1 year, 8 months, and 5

days of active service with 84 days of lost time. He was assigned separation code JFS and the narrative reason for separation is listed as "Conduct Triable by Court Martial" with RE codes 3 and 3B. It also shows he was awarded or authorized the:

- Rifle M-16 Sharpshooter Qualification Badge
- Hand Grenade Familiarization Course Qualification Badge

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.
6. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.
7. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, under the Uniform Code of Military Justice 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.
8. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.
2. 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 charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. Given the seriousness of his offense, 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
[REDACTED] [REDACTED] [REDACTED] 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

- a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
- b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets the criteria governing the issuance of honorable, General, and Under Other Than Honorable Conditions Discharge Certificates.

- a. An honorable discharge is a separation with honor. Issuance of an Honorable Discharge Certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or current period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude.
- b. A 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.
- c. An under other than honorable conditions discharge is an administrative separation from the service under conditions other than honorable. It may be used for misconduct, for homosexuality, for security reasons, or for the good of the service.
- d. Chapter 10 of this regulation states a member who has committed an offense or offenses, the punishment for any of which, under the Uniform Code of Military Justice 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. An Undesirable Discharge Certificate will normally be furnished an individual who is discharged for the good of the service.

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/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 based on 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//