

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 September 2024

DOCKET NUMBER: AR20230014402

APPLICANT REQUESTS: in effect, an upgrade of his under other than honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record), 27 November 2023
- Self-authored Statement, undated
- Letter of Support, Ms. [REDACTED] undated
- Letter of Support, Mr. [REDACTED] undated
- Letter of Support, Mr. [REDACTED] 3 November 2023

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, he is requesting an upgrade of his under other than honorable conditions discharge.

a. He was wrongfully accused of possessing marijuana on 6 January 1974. He was punished because of the incident; however, he was never searched or informed of anything related to marijuana. He was given extra duty and his pay was reduced. He was unaware of why he was being punished and it was not explained to him. He was subsequently punished for failing to go to his appointed place of duty on 10 May 1974, and he denies failing to report to his appointed place of duty. He was not informed about being at a required place of duty and waited for weeks for someone to tell him where he needed to be for duty. He did not receive extra duty and never got in any trouble.

b. He was counseled on 16 May 1974, yet he did not believe he had problems with his appearance or interest towards authority. He did not receive a letter of admonition on 18 June 1974; however, he was given extra duty and worked kitchen patrol (KP) but was not informed of the reason for his punishment. He did not miss formations, nor did

he have any issues with his haircut, and was not counseled on 3 July 1974, as noted. On 11 July 1974, his pay was deducted, and he was given 14 days of restriction and extra duty. He did not see a need in fighting it because there was nothing he could do about it. He continued to get punished without being told why he was being punished to include missing duty from 17 July 1974 to 22 July 1974, but he did not miss duty.

c. His service record indicated he received a mental health examination on 14 November 1974, yet he has no knowledge of such examination. On 15 November 1974, he stood before a board, he was given a stack of papers, yet he was not permitted to read. The text was covered, and he was asked to sign the documents. He reached a point where he just wanted to be done, did not ask any questions and just did what was asked of him. He requested to be discharged due to the way he was being treated and he knew he was being discriminated against due to his race. He was called racial slurs by people with authority over him. He was surprised by the way he was treated after he volunteered to serve.

3. The applicant provides:

a. A letter of support from Ms. [REDACTED] a church member who has known him for 29 years as a man of honor, integrity, and a great pillar in the community. He is family oriented and takes great care of his family. He is loved by his wife, children, grandchildren, and many friends. He is a Christian man, a deacon at his church, and he has been a mentor for many young men in the community. He is willing to help others in any way that he can.

b. A letter of support from Mr. [REDACTED] which states he has known the applicant for 32 years. He met the applicant in the apartment complex where he was living and working as the maintenance manager. They became friends because of their love of God and for their interest in sports and played in the neighborhood. Eventually he moved away but they kept in contact with each other and invite each other to church events. The applicant is like a brother to him.

c. A letter of support from Mr. [REDACTED] a Pastor at his church, who has known the applicant his entire life. The applicant has never done drugs, has never driven under the influence of alcohol, has never been incarcerated, and he served his country faithfully. He has been a fine citizen of the [REDACTED]. He is a Christian man and respected throughout the community and other cities he has lived in. He is a hard worker, a pillar of the community, and a role model for young men everywhere, including his family.

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

a. On 3 October 1973, he enlisted in the Regular Army for 3 years. He was awarded military occupational specialty 76Y (Supply Clerk).

b. On 3 February 1974, he was promoted to private/E-2 and on 14 February 1974, he was assigned to Battery A, 3d Battalion, 7th Air Defense Artillery (ADA), Germany.

c. On 16 May 1974, he was informally counseled by his platoon sergeant about his job responsibilities and what was expected of him while he was stationed in Germany. The counselor noted he spoke to him about his personal appearance and his lack of interest towards authority. His response was recorded as he would listen but felt that he should only have to do what he wants to do and when he wants to do it. The counseling did not include the applicant's signature.

d. On 20 May 1974, he accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for failing to report to his appointed place of duty on 10 May 1974 in Schweinfurt, Germany. His punishment consisted of an oral reprimand and 7 days of extra duty. The DA Form 2627 (Summarized Record of Proceedings Under Article 15, UCMJ) includes a signature in Section II (Acknowledgment of Imposition of Punishment).

e. On 24 June 1974, he was counseled by his company commander on his duty performance based upon inefficiency reported on 18 June 1974. He elected not to make a statement and the counseling statement was signed.

f. On the same date, the applicant accepted NJP under the provisions of Article 15 of the UCMJ, for two specifications of going without authority from his place of duty at Battery A tactical site on or about 1530 hours on 14 June 1974 and on or about 0900 hours on 19 June 1974. His punishment included reduction to private (PVT)/E-1 (suspended for 60 days). The DA Form 2627 includes the applicant's signature.

g. On 3 July 1974, he was informally counseled by his platoon leader for repeated denial to obtain a military haircut. He was advised that any more incidents of misconduct would result in UCMJ. The form did not include his signature.

h. Special Orders Number 131, issued by Headquarters (HQ), 3d Battalion 7th ADA, dated 6 July 1974, shows he was reduced to PVT by reason of misconduct.

i. On 11 July 1974, he accepted NJP for one specification of failing to go to his appointed place of duty at Battery A tactical site on or about 0730 hours on 3 July 1974 and one specification of failure to obey a lawful order from a superior commissioned officer on or about 4 July 1974. The DA Form 2627 includes the applicant's signature.

j. A memorandum issued by the Service Platoon Commander dated 19 August 1974, shows the applicant's commander recommended his elimination from the service.

k. On 21 August 1974, he accepted NJP for failure to go to his appointed place of duty on 17, 18, 19, 20, and 22 July 1974. The DA Form 2627 includes the applicant's signature.

l. On 14 November 1974, he underwent a mental health status evaluation. The examining psychologist found his behavior was normal, he was fully alert and fully oriented with clear thinking process and level mood. His memory was good, and his thought process was clear. The examining psychologist found he had the mental capacity to understand and participate in board proceedings and he met the retention standards in Chapter 3, Army Regulation 40-501.

m. On 15 November 1974, the Commanding Officer, Battery A, 3d Battalion, 7th ADA, notified him of his intention to initiate action to affect his discharge under the provisions of paragraph 15-5a(1), Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) for unfitness, and notified him of his rights. He understood he had the right to present his case before a board of officers, to submit statements in his own behalf, to be represented by counsel, to request a psychiatric examination in connection with this action, and to waive his rights in writing.

n. On the same date he acknowledged receipt of his commanding officer's notification and elected his rights. He acknowledged he had met with counsel and requested consideration of his case by a board of officers, he requested a personal appearance before a board of officers, he requested representation by counsel, and he elected not to submit statements in his own behalf. He understood he may receive an Undesirable Discharge since he was being recommended for separation for unfitness, he may be ineligible for many or all benefits as a veteran under both Federal and State laws, and he may expect to encounter substantial prejudice in civilian life.

o. On the same date, his commanding officer recommended his elimination from the service for unfitness because of frequent incidents of a discreditable nature with civil or military authorities. His commander noted he had been counseled on three occasions and he had received multiple NJP under provisions of Article 15 of the UCMJ, but his unsatisfactory performance remained unchanged.

p. On 22 November 1974 and on 27 November 1974, his Battalion and Brigade Commanders recommended approval of his discharge, respectively.

q. On 5 December 1974, he was notified to appear before a board of officers.

r. On 27 December 1974, a board of officers found he was undesirable for further retention in the military by habits and traits of character manifested by repeated commission of petty offenses and recommended his discharge because of unfitness, with the issuance of an Undesirable Discharge Certificate.

s. On 10 January 1975, the Judge Advocate General, 3d Infantry Division, found no legal objection to approving his discharge.

t. On 15 January 1975, the Commanding General, 3d Infantry Division, approved his elimination under provisions of Army Regulation 635-200, paragraph 13-5-a(1) for unfitness and directed issuance of an Undesirable Discharge Certificate.

u. On 24 January 1975, he was discharged. His DD Form 214 (Report of Separation from Active Duty) reflects he was discharged under the provisions of Army Regulation 635-200, Paragraph 13-5a(1) by reason of unfitness with a characterization of service of under conditions other than honorable. He completed 1 year, 3 months, and 22 days of total service with no time lost.

5. By regulation (AR 635-200), an individual is subject to separation under the provisions of this chapter for unfitness due to frequent incidents of a discreditable nature with civil or military authorities.

6. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency.

2. The Board found the evidence of good post-service conduct and citizenship provided by the applicant supports clemency in this case. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to under honorable conditions (general).

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show his character of service as under honorable conditions (general).

3/4/2025

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), in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

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 13 established policy and provided procedures and guidelines for eliminating enlisted personnel found to be unfit or unsuitable for further military service. Despite attempts to rehabilitate or develop him as a satisfactory Soldier, further effort is unlikely to succeed; or rehabilitation is impracticable or his is not amenable to rehabilitation measures as indicated by medical and or personal history record.

d. Paragraph 13-5a(1). An individual is subject to separation under the provisions of this chapter for unfitness due to frequent incidents of a discreditable nature with civil or military authorities.

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/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//