

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 September 2024

DOCKET NUMBER: AR20230014728

APPLICANT REQUESTS, in effect:

- to upgrade his under other than honorable conditions (UOTHC) characterization of service
- restore his Department of Veterans Affairs pension

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

- DD Form 149, Application for Correction of Military Record
- Applicant's statement
- Character Reference
- DD Form 214, Certificate of Release of Discharge from Active Duty

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 had serious family issues that prevented him from fulfilling his military obligations. He contends that Department of Veterans Affairs (VA) originally approved his pension due to his service during the Vietnam Era. He has been denied additional pension and would like it to be reinstated.

a. He is separated from his spouse, and she does not provide him any support. Over the last several years he lost his twin brother, and his son which caused him to fall into a deep depression.

b. His son was born shortly after he joined the military, and he was not allowed to go home to see his family. His son suffered from seizures due to a complicated delivery and the stress of not being there for his family made it difficult to perform his duties. He asked to be released to go and be with his family. He could not see fighting a war when

he did not know if his son would live or die. He is in no position to pay back the pension he received.

3. The applicant's request to reinstate his VA pension is not within the purview of this Board and will not be discussed in the Record of Proceedings.

4. The applicant enlisted in the Regular Army on 5 July 1972. He held military occupational specialty 13A, field artillery basic.

5. His record is void of foreign service during his period of service.

6. He accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on:

- 21 March 1973, for being AWOL from 7 March 1973 to 14 March 1973
- 20 June 1973, for being AWOL from 11 May 1973 to 15 May 1973

7. The record contains Correctional Progress Notes, 3 October 1973, which show the applicant requested to be discharged because he was having financial problems. He was not able to support his spouse and two children or pay all his bills.

8. He was convicted by Special Court Martial for being AWOL from 19 March 1973 until 9 July 1973. The court sentence dim to reduction to private/E-1, hard labor for four months, and forfeiture of \$200.00 per month for four months. The sentence was adjudged on 9 October 1973 and approved on 12 October 1973.

9. On 26 October 1973, the applicant's commander recommended he be discharged from service for unfitness under Chapter 13, Army Regulation (AR) 635-200, Personnel Separations-Enlisted Personnel. His commander stated the applicant had received two Article 15s and been convicted by a Special Court Martial. Further rehabilitations efforts would be futile.

10. He was advised by counsel of the basis for the contemplated action to accomplish his separation for unfitness under Chapter 13, Army Regulation (AR) 635-200. He waived his right to counsel and elected not to submit statements on his own behalf. He acknowledged that he could expect to encounter substantial prejudice in civilian life in the event he was to receive a general discharge under honorable conditions.

11. On 8 November 1973, the separation authority directed the applicant be discharged on under the provisions of Chapter 13, AR 635-200 with an undesirable characterization of service.

12. His DD Form 214, Armed Forces of the United States-Report of Transfer or Discharge, shows he was discharged on 21 November 1973 by reason of unfitness, frequent incidents of discreditable nature with civil or military authorities. His service was characterized as under conditions other than honorable. He completed 1 year, and 6 days of net service with 133 days of lost time (Separation Code 28B and Reenlistment Code 3).

13. The applicant provided a character reference, 17 April 2023, from his religious leader. This person stated the applicant had been a member of the church for over 30 years. He had an unfortunate family emergency which forced him to make the most difficult decision of his life. A decision the applicant regrets. But since joining the church he has been a mentor to kids and supported law enforcement with community issues. He has grown and changed to be a better person.

14. The Board should consider the applicant's statement in accordance with the published equity, injustice, or clemency determination guidance.

15. A separation for unfitness included frequent incidents of a discreditable nature, sexual perversion, drug abuse, shirking, failure to pay just debts, failure to support dependents and homosexual acts. When separation for unfitness was warranted an undesirable discharge was normally considered appropriate.

16. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to multiple AWOL offenses leading to the applicant's separation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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. AR 635-200, Personnel Separations - Enlisted Separations, provides:

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 of an individual whose military record is not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 13, in effect at the time, states for separation for unfitness, which included frequent incidents of a discreditable nature, sexual perversion, drug abuse, shirking, failure to pay just debts, failure to support dependents and homosexual acts. When separation for unfitness was warranted an undesirable discharge was normally considered appropriate.

3. Title 38, U.S. Code section 1110, General - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

4. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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.

6. AR 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//