

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 September 2024

DOCKET NUMBER: AR20230014863

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to under honorable conditions (General)
- spinal tap for exposure to herbicides
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Continuation of DD Form 149

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:

a. Rather than let him resign to give a full defense to the domestic charge of burglary, he was separated from the Army. The 525th Military Police Company tainted his chances of avoiding a conviction in civilian court, which tainted his affirmative defense beyond repair.

b. He was discharged from the Army in April 1974, which forced a plea to his civilian charges in May 1974. He attempted to redress the entire "perfect storm" of events in 1980 or 1981.

c. He was exposed to chemical herbicides, during transition from 3rd Army to Forces Command in 1973, while stationed at Fort MacPherson. He was trying to procure additional GI Bill benefits with medical coverage but was unable to.

d. If it were not for the PACT Act, which may or may not come to been seen as relevant, he would likely just continue to live with the injustice dealt to him almost 50 years ago. The injustice made his life worse.

e. He joined the Army on 1 November 1972 to get away from a mentally ill mother-in-law. Vietnam would be his salvation. Military Police were still going. Fort Gordon sent their last advanced individual training graduates, to Vietnam, from the class before his. He was asked where he would like to go instead of going to Vietnam. He said he wanted to go to Fort Hood, Texas for dog handling training. It was considered a good choice.

f. He received orders to report to Fort MacPherson, which was 20 miles away from where he was living with his mother-in-law. There he met a woman, who lived off post, worked for the CSX [sic], and had been a middle school teacher. She asked him to help her benefit from a planned divorce by taking things she wanted to keep that her husband might be able to win in court. At the time, he did not think of it as committing a crime.

g. The woman and her family went on a 10 day vacation. She had given him a key and he went in the back door, retrieved the items from the list, left the way he went in, and locked the door. He had kicked the door open which likely excited the interest of a neighbor, who called another neighbor, who followed him to a friend's house in the same neighborhood. The neighbor did not call the police, at that time.

h. When the woman and her husband returned two days later, they called the police. When the police showed up, the neighbor told them he had seen someone with a large pillow case and he had followed him. The police were notified and he was taken to the police station but was released to iron out the mess, which was not easy because he had a new wife, a new baby, a girlfriend who was 10 years older than him, her husband, his Army company, and a crazy mother-in-law to deal with.

i. Around the same time, assorted herbicides were being removed from a warehouse on Fort MacPherson. His point is, removing him from active duty prior to the conflict being resolved tilted the balance against him in an attempt to fix the issue without it resulting in a conviction.

j. The exposure to the chemical agents then may have affected his decision making from that time forward. With this he is asking for a spinal tap for agent herbicides exposure and the necessary discharge upgrade, which would accommodate the same.

3. As it relates to the applicant's request for a spinal tap due to exposure to herbicides, this is outside the purview of the ABCMR. This issue will not be discussed further in these proceedings.

4. A review of the applicant'

a. DD Form 4 (Enlistment Contract - Armed Forces of the United States) shows he enlisted in the Regular Army on 1 November 1972.

b. A Qualitative Management Program Extension to Grades E1 and E2 shows he was eligible for promotion on 1 March 1973. Actions taken was he had been counseled on several occasions on his attitude and duty performance. Advice had been afforded to him as to how he could improve himself and the actions to be taken if he did not improve. Counseling and advice given states he had been advised that he should improve his attitude and motivation. He also had trouble grasping basic military subjects and was given additional training to try to improve.

c. DA Form 20 (Enlisted Qualification Record) shows he was promoted to the rank of private (PVT)/E-2 on 25 February 1973 and he was reduced to the rank of PVT/E-1 on 12 June 1973. He had periods of being absent without leave (AWOL) from 26 September 1973 through 27 September 1973 (2 days), 29 October 1973 through 30 October 1973 (2 days), 29 November 1973 (1 day), 19 December 1973 through 20 December 1973 (2 days), and 28 December 1973 through 8 January 1974 (12 days). He was in civilian confinement from 14 January 1974 through 20 January 1974 (7 days).

d. He accepted nonjudicial punishment on/for:

- 9 March 1973 for failing to go to his appointed place of duty
- 25 May 1973 for being AWOL on 24 May 1973
- 11 June 1973 for failing to go to his appointed place of duty on two occasions and willfully disobeying a lawful order; his punishment included reduction to PVT
- 25 June 1973, for failing to go to his appointed place of duty

e. Memorandum enlisted member/confined by civil authorities, 31 August 1973, states the applicant had been apprehended by civil authorities for two counts of burglary. An indorsement to the memorandum, 14 September 1973, states the applicant had been apprehended on 13 August 1973, his bond was paid, and he was released on 14 August 1973. He had a court date in October 1973.

f. Memorandum arrested by civil authorities, 22 February 1974, states the applicant had been arrested by civil authorities and consideration would be given to separating him under the provisions of Section VI (Conviction by Civil Court) Army Regulation 635-206 (Personnel Separations Discharge Misconduct (Fraudulent Entry, Conviction by Civil Court, and AWOL or Desertion)), if applicable.

g. The applicant's separation packet is not available for the Board's consideration. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged on 19 April 1974. He had completed 1 year, 4 months, and 23 days of net active service. Item 9c (Authority and Reason) is blank. Item 9e (Character of Service) shows under other than honorable conditions. Item 10 (Reenlistment Code) is blank. Item 27 (Remarks) shows he had 26 days lost.

5. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. 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.

#### 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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated with an under other than honorable conditions characterization of service. The evidence of record shows four records of nonjudicial punishment for failure to be at his appointed place of duty on more than one occasion, being absent without leave, and violating a lawful order. The Board found no error or injustice in the separation proceedings under the regulation and subsequent characterization of service assigned at separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

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 15-185 (Army Board for Correction of Military Records) 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. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director, ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. This regulation provides that:

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.

4. Army Regulation 635-206 (Personnel Separations Discharge Misconduct (Fraudulent Entry, Conviction by Civil Court, and AWOL or Desertion)), in effect at the time, set forth the basic authority for the separation of enlisted personnel for misconduct. Section VI, paragraph 33 (Conviction by Civil Court) of this regulation prescribes the standards and procedures for processing cases of individuals who, during their current term of active military service, have been initially convicted or adjudged juvenile offenders by a domestic court of the United States or its territorial possessions, or convicted by a foreign tribunal. If discharge is desired and the individual is not physically in the custody of the civil authorities, a recommendation for discharge may be submitted to Headquarters, Department of the Army. It provided that an undesirable discharge was normally considered appropriate for members separated under this regulation.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 on the basis of 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//