

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 September 2024

DOCKET NUMBER: AR20230014958

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to under honorable conditions (general).

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 is requesting an upgrade of his under other than honorable conditions discharge to under honorable conditions (general). He cannot offer a reason for the correction other than he had extenuating family circumstances at that time. He tried to help, and he failed.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army 16 April 1970.
 - b. A DD Form 458 (Charge Sheet) shows charges were preferred on the applicant on 16 September 1975 for two specifications of being absent without leave (AWOL) from on or about 10 February 1971 through 24 March 1971 and again from on or about 27 May 1971 through 9 September 1975.
 - c. On 11 March 1998, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). Only page 1 is available, he acknowledged:
 - maximum punishment

- he was guilty of the charges against him or of a lesser included offense
- 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 and furnished an Undesirable Discharge Certificate

d. On 24 September 1975, the separation authority approved the applicant's request for discharge for the good of the service. He would be furnished an Undesirable Discharge Certificate. The applicant will be reduced to the lowest grade.

e. On 14 October 1975, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Report of Separation from Active Duty) shows he completed 1 year and 27 days of active service, with 876 days of lost time. He was assigned separation code KFS and the narrative reason for separation listed as "Conduct – Triable by Court - Martial," with reentry codes 3B. It also shows he was awarded or authorized the National Defense Service Medal.

4. 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.

5. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

6. 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. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of being AWOL 876 days. The Board noted, the applicant provided no post service

achievements or character letters of support for the Board to weigh a clemency determination.

2. The Board agreed, the applicant's service record exhibits numerous instances of misconduct during his enlistment period of completed 1 year and 27 days of active service, with 876 days of lost time. The Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a general under honorable conditions discharge. Therefore, the Board denied relief.

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.

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 635-8 (Separation and Processing Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. An honorable discharge is a separation with honor. 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member 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//