

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 September 2024

DOCKET NUMBER: AR20240000176

APPLICANT REQUESTS: correction of his DD Form 214 (Report of Separation from Active Duty) to show his characterization of service as honorable and his narrative reason for separation as Secretarial Authority.

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

- DD Form 149 (Application for Correction of Military Record)
- counsel's brief in support of application, undated
- applicant's personal statement, undated
- character reference letter, Ms. L____ W____, undated
- DD Form 4 (Enlistment Contract), 7 June 1973
- letter, The Adjutant General of Pennsylvania, Pennsylvania Army National Guard (PAARNG), 14 June 1973
- Continental Army Command (CONARC) Form 578-R (Individual Training Record (Basic Training and Advanced Individual Training/ Combat Support Training)), from 27 August 1973 to 2 October 1973
- Letter of Instruction, Unsatisfactory Participant, PAARNG, 5 May 1975
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim), 10 May 1975
- Memorandum, Subject: Notification of pending orders to active duty, PAARNG, 28 June 1975
- National Guard Bureau (NGB) Form 22A (Correction to NGB Form 22 (Report of Separation and Record of Service), 20 October 1975
- DA Form 268 (Report for Suspension of Favorable Personnel Action (FLAG)), 5 December 1975
- Personnel Control Facility-Interview Sheet, 13 May 1976
- Commanders Statement/Recommendation, undated
- 1 page excerpt from a DD FORM 458 (Charge Sheet), undated
- DD Form 214 (Report of Separation from Active Duty), ending 28 June 1976
- two Certificates for Completion of Real Estate Courses, 4 August 1988, and 1 September 1988
- General Educational Development (GED) Completion Certificate, 3 May 1989
- Certificate of Completion of H&R Block Tax Training School, November 1992

- Letters of Recognition and Appreciation from the Pennsylvania Department of Corrections, 12 December 2012, and 7 February 2013
- Certificate for Completion of 20 Years of Service from the Commonwealth of Pennsylvania Department of Corrections, 18 May 2018

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 asserts his DD Form 214 should be corrected to show his service is characterized as honorable in lieu of instead of under other than honorable conditions and his narrative reason for separation should be corrected to Secretarial Authority in lieu of trial by court-martial, based on material error and injustice. Additionally, he states:

a. He served proudly and honorably at the time of his enlistment with the ARNG. He received 2 commendation letters for his actions, but at the same time, he was struggling with hardships at home; his wife was an abusive alcoholic and they later divorced.

b. He went back to school to obtain his GED because the one he received during basic combat training was not recognized by the Pennsylvania Board of Education. He was working full time after receiving his diploma, but he continued his education by attending college part time. He also took other classes to better himself.

c. Later in his life, he worked in law enforcement with the Pennsylvania Department of Corrections. During his employment, he received 2 letters of appreciation. He retired in 2018 with 20 years of service.

3. Counsel provides a brief in support of the applicant's request, wherein he states:

a. The applicant enlisted in the PAARNG on 7 June 1973 as a Military Police Officer (MP). He attended basic combat training on 7 September 1973 where he satisfactorily completed all required tests. The applicant graduated basic combat training in September of 1974 and graduated from Advanced Individual Training in November 1974. After training, the applicant was assigned to Detachment 1, 42d Military Police Unit within the PAARNG. The applicant completed all of his duties and showed up for scheduled drills while assigned to his Military Police Unit. Around April 1975, the applicant's Military Police Unit was disbanded, and he was assigned to Company B, 1st Battalion, 111th Infantry.

b. Upset with the unilateral decision to be taken out of his MP Military Occupational Specialty (MOS), the applicant missed a Mandatory Unit Training Assembly (MUTA) (five) 5 on 2,3,4 of May 1975. The applicant also missed another drill on 22 June 1975 and Annual Training (AT) from 28 June 1975 to 12 July 1975. The applicant's new unit commander recommended the applicant be involuntarily ordered to active duty. The applicant continued to miss drills and was dropped from rolls (DFR) on 28 November 1975. The applicant returned to the U.S. Army Reception Station at Ft. Dix, New Jersey on 11 May 1976. The applicant then requested a discharge for the good of the service and was discharged on, 28 July 1976; he received an "Under Conditions Other than Honorable" characterization of service.

c. Counsel contends the separating authority committed a material error of discretion by discharging the applicant with an "Other than Honorable" conditions characterization of service. Here, the Army made a clear error of discretion in unilaterally forcing the applicant to change his specialty. Specifically, the Applicant enlisted as an MP , but he was forced into an infantry unit after his old unit disbanded. This error is further accentuated since the applicant never received the opportunity to switch jobs or find a different MP unit. The applicant acknowledges the way he handled the situation was incorrect, but the applicant never would have been absent without leave (AWOL) if the Army had correctly transferred the applicant. Furthermore, the applicant requests this Honorable Board to review his service record with leniency in the fact that although he was wrong, the applicant felt he had no other choice because the Army was going against the contract he signed that designated and trained him as an MP.

d. Counsel also contends the applicant has suffered a material injustice from his discharge status and character of service due to the uniquely horrible circumstances. The prevailing case law holds that the applicant's current discharge situation is facially detrimental. *Stapp v. Resor* stated that "[t]here can be no doubt that a military discharge on other than honorable grounds is punitive in nature, since it stigmatizes the serviceman's reputation, impedes his ability to gain employment and in his life, if not in law, prima facie evidence against the serviceman's character, patriotism or loyalty." 314 F. Supp. 475,478 (U.S.D.N.Y. 1970). *Sofranoff v. United States* further explains this punitive burden, with the court stating that "[s]ince the vast majority of discharges are honorable, the issuance of any other type of discharge stigmatizes ex-servicemen. It robs him of his good name. It injures his economic and social potential as a member of the general community." 165 Ct. Cl. 470 (Ct. Cl. 1964).

e The applicant continued to strive for success despite his prejudicial discharge status. Specifically, right after the applicant's discharge he chose to go back to school and receive his GED. Following this, the applicant would go to college and take classes part time while working full-time. The applicant went on to work twenty (20) years with the Pennsylvania Department of Corrections and recently retired in 2018. During his

time working within the Pennsylvania Department of Corrections, the received two letters of appreciation that spoke to the Applicant's commitment, knowledge, team-oriented attitude, and poise. Along with a long and successful career, the Applicant also pursued multiple certificates in real estate, the fundamentals of real estate, and Tax Preparation.

f. If these previously noted successes alone do not speak to the man the applicant has become, the character reference of Ms. L_____ W_____ does. Ms. L_____ W_____ spoke to the same unique attributes the Army looks for in Soldiers. Specifically, she stated "[Applicant] is a very trustworthy man. Helping wherever he can. He has helped me enormously where I have faced many hardships myself. And now I am happy to say we are engaged to be married." Ms. L_____ W_____ further discusses the exceptional person the applicant is and the exceptional accomplishments he has achieved despite his discharge characterization.

g. In light of the arguments presented, the applicant respectfully requests his discharge be upgraded to "Honorable" and his narrative reason for separation changed to reflect "Secretarial Authority." The Applicant's current discharge status improperly characterizes an unfortunate situation. It is respectfully submitted that this Honorable Board grant the Applicant's request and correct his records for reasons of material error and material injustice.

4. The applicant provides a character reference letter from Ms. L_____ W_____, who states, although she did not know the applicant when he served, he has shared so much with her since they met 6 years ago. He told her he was very proud to be in the military and he was so passionate about becoming a police officer, both in the military and out.

a. The applicant said he was so disheartened to learn he would not be moving on to a career in the Army. Things then took a turn and that is when he was discharged, but in a negative light.

b. As for his moral character, the applicant has been an upstanding citizen. He has gained his GED, gone to college and became a Correctional Officer in excellent standing.

c. The applicant is a very trustworthy man; always helping where he can. He has helped Ms. L_____ W_____ enormously when she faced many hardships herself, and now she is happy to say she and the applicant are engaged to be married. She further states, the applicant is an exceptional person.

5. The applicant enlisted in the PAARNG and the Reserve of the Army on 7 June 1973 for a period of 6 years. He was ordered to active duty for training (ADT) from

approximately 8 August to 7 December 1973. He was awarded MOS 95B (MP) and he was honorably relieved from active duty for training (ADT).

6. The applicant provides a letter from the PAARNG to the commander of Detachment 1, 42d MP company, dated 14 June 1973, which states the applicant was eligible for a "CONFIDENTIAL" clearance.

7. A letter of Instruction - Unsatisfactory Participation, dated 25 June 1975, was addressed to the applicant. The letter, which was either delivered in person or sent via certified mail, delivered to addressee only, return receipt requested, was furnished in accordance with Army Regulation 135-91 because the applicant was credited with one or more unexcused absences or unsatisfactory participation in unit training assemblies; specifically, because he was reported AWOL.

a. The applicant was counseled on the provisions of Army Regulation 135-91 and he acknowledged by his signature that he understood his obligation to participate satisfactorily. Briefly, unless excused by the commander for reasons of sickness, injury, emergency, or other circumstances beyond his control and substantiated by appropriate affidavits or certificates, he had a continuing requirement to attend all scheduled training periods until completion of his service obligation.

b. The commander provided the following record of unexcused absences including periods of unsatisfactory participation charged to the applicant during the current 1 year period:

- 2 MUTA on 22 September 1974
- 5 MUTA on 2, 3, 4, May 1975
- 2 MUTA on 22 June 1975

8. A memorandum from his commander, dated 28 June 1975, subject: Notification of Pending Orders to Active Duty, published by Company B, 1st Battalion, 111th Infantry Regiment, 28th Infantry Division, PAARNG, informed the applicant he was being ordered to active duty under the provisions of Army Regulation 135-91, he was being ordered to active duty for a period which, when added to his prior service on active duty, active duty for training, annual field training, or full time training duty, would total 24 months.

a. The letter further advised him, his attendance record reveals you had accrued the following unexcused absences or periods of unsatisfactory performance during a one year period or less:

Date	Type of Assembly	Chargeable Absences	Cumulative Total in One Year
22 September 1974	MUTA 2	2	
2, 3, 4 May 1975	MUTA 5	4	
28 June 1975 - 28 July 1975	Annual Training	15	21

b. The applicant was informed he was required to enter on active duty on or about 30 days after this notification, and unless notified otherwise, he was not required or authorized to attend unit assemblies while awaiting entry on active duty, and he would be granted excused absences during the period involved.

c. His commander informed him he may apply for a delay in reporting for active duty for specified reasons provided the application was made in writing prior to publication of his active duty orders, except that for emergencies, to include illness and injury, applications may be made at any time by the most expeditious means practicable. Applications will include supporting documents, as appropriate.

9. The applicant's PAARNG commander authored an undated statement, wherein he states, in effect:

a. The applicant was counseled on his Reserve obligation, satisfactory participation requirements, and enforcement provisions contained in Army Regulation 135-91 (Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Provisions). On 7 June 1973, the date of his initial enlistment into the PAARNG.

b. The applicant was transferred to his current unit (an infantry unit) from an MP unit on 1 April 1975. Since then, he has not attended any training assemblies or summer camp with his new unit.

c. The unit tried, on numerous occasions, to contact the applicant by phone; each time his mother stated he was not at home. The unit asked he if knew the trouble he would be in and that he would be submitted for an involuntary order to active duty for being absent from unit training assembly; she stated he was aware of the fact.

d. The applicant's commander, recommended, the applicant be involuntarily ordered to active duty. For the above mentioned reasons, under the provision of Army Regulation 135-91.

10. On 21 July 1975, the applicant's intermediate commanders recommended approval of the request to involuntarily order the applicant to active duty.

11. A letter issued by the PAARNG on 18 August 1975, subject: Right to appeal Involuntary Order to Active Duty, informed the applicant, as a result of his accruing at least five (5) unexcused absences within a year's time, he was reported to the Army Area Commander for involuntary order to active duty under the provisions of Army Regulation 135-91. He was also informed of his right to appeal this order to active duty, in writing, to his unit commander no later than 15 days from the receipt of this letter.

12. Letter Orders E-09-151, issued by Headquarters, First United States Army, Fort Mead MD, on 24 September 1975, show he was ordered to active-duty, effective 29 October 1975, for a period of 19 months and 13 days. His DA Form 20 (Enlisted Qualification Record) shows he was assigned to Fort Dix, NJ.

13. His NGB Form 22 shows, he was discharged from the PAARNG, with a general character of service, effective 28 October 1975, and he was ordered to active duty. His primary MOS was listed as 95B (MP) on his NGB Form 22 and his DA Form 20 (Enlisted Qualification Record).

14. A personnel Control facility interview sheet, dated 13 May 1976, shows the applicant surrendered himself to military control.

15. On 13 May 1976, the applicant was charged with being AWOL from on or about 29 October 1975 to 11 May 1976.

16. On 13 May 1976, the applicant underwent a medical examination for the purpose of administrative separation. A Standard Form (SF) 88 (Report of Medical Examination) and SF 93 (Report of Medical History) show he was found qualified for separation and he reported he was in good health.

17. On 14 May 1976, the applicant submitted a voluntary request for discharge for the good of the service under chapter 10, AR 635-200. His request confirms he understood he may request discharge for the good of the Service because charges have been preferred against him under the uniform code of military justice which authorizes the imposition of a bad conduct or dishonorable discharge. He made this request of his own free will and had not been subjected to any coercion whatsoever by any person. He had been advised of the implications that are attached to it. By submitting this request for discharge, he acknowledged he is guilty of the charges against him. He states that under no circumstances does he desire further rehabilitation, as he had no desire to perform further military service. Prior to completing his request, he was afforded the opportunity to consult with counsel and did so. He indicated he understood the possible effects of an undesirable discharge and that he will be deprived of many Army benefits and may encounter prejudice in civilian life.

a. The applicants immediate and intermediate commanders recommended approval of his request for discharge, noting he accrued 194 days of lost time and he was returned to military control after being apprehended by civil authorities.

b. On 26 May 1976, the separation approval authority approved his request with the issuance of an Undesirable Discharge Certificate and a reduction to the lowest enlisted rank/grade.

18. Block 33 (Appointments and Reductions) of his DA Form 20 includes the following information:

- Private (PV1)/E-1 - 7 June 1973
- Private (PV2)/E-2 - 7 October 1973
- Private First Class (PFC)/E-3 - 1 April 1974

19. The applicant's DD Form 214 shows, on 28 June 1976, he was discharged under the provisions of chapter 10, AR 635-200, in lieu of trial by court martial with service characterized as under other than honorable conditions. He was credited completing 1 month and 13 days of net active service this period, 4 months and 18 days of total prior active service, and 6 months and 6 days of total active service. He also had 194 days of lost time. Additionally, his DD Form also shows:

- rank/grade PV1/E-1 effective 26 May 1976
- Separation code KFS
- Reentry code 4

20. The evidence provided by the applicant was provided to the Board in its entirety.

21. Administrative separation under the provisions of chapter 10 of Army Regulation is a voluntary discharge request in-lieu of trial by court martial. By requesting a discharge under the provisions this chapter of the regulation, a service member at this time, would have waived his opportunity to appear before a court-martial and risk a felony conviction. An under other than honorable conditions character of service is authorized and normally considered appropriate.

22. The applicant provided argument or evidence that the Board should consider in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

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 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 charged with being absent without leave from 29 October 1975 to 11 May 1976, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board majority found no error or injustice in the separation proceedings and designated characterization of service. The Board minority found the applicant demonstrated good character post-service and determined partial relief was appropriate to upgrade the applicant's characterization of service to under honorable conditions (General). Based on a preponderance of the evidence, the Board majority concluded that the characterization of service the applicant received upon separation was not in error or unjust and denied relief. Additionally, the Board noted the applicant's request to amend his separation authority to Secretarial Authority; however, found no basis for the amendment and denied relief.

BOARD VOTE:

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:	:	:	GRANT FULL RELIEF
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■	■	:	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 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of this regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, an under than honorable conditions discharge is normally considered appropriate.

b. 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.

c. 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.

d. Secretarial Plenary Authority (Current regulation, chapter 15) provides, separation under this chapter is the prerogative of SECARMY. Secretarial plenary separation authority is exercised sparingly and used when no other provision of this regulation applies. Separation under this chapter is limited to cases where the early separation of a Soldier is clearly in the best interest of the Army. Separations under this chapter are effective only if approved in writing by SECARMY or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers. When used in the latter circumstance, it is announced by special HQDA directive that may, if appropriate, delegate blanket separation authority to commanders with GCMCA for the class of Soldiers concerned.

//NOTHING FOLLOWS//