

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 July 2024

DOCKET NUMBER: AR20240000181

APPLICANT REQUESTS:

- in effect, an upgrade of his under other than honorable conditions discharge to general, under honorable conditions
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Two Character Reference Letters
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) effective 17 December 1971

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 to general, under honorable conditions. He was a young, 17-year-old, impressionable Soldier who was "gung-ho" and wanted to make a career of the Army. Once he completed basic combat training, he was sent to the diesel mechanic advanced individual training (AIT), where he became acquaintances with one of his sergeants who had severe addiction issues. Being a young Soldier and fearing the retribution of senior leaders, he tried heroin with this sergeant. This began a cycle of addiction which he regrets to this day. He believes that if his command had afforded him the opportunity to attend substance abuse treatment, he could have been an asset to the Army.

3. The applicant provides two-character refence letters:

a. Bishop L.W.S., Pastor of Greater New Zion Baptist Church states that he has known the applicant for over 15 years in his letter dated 6 August 2023. Bishop L.W.S. describes the applicant as a responsible and faithful man with excellent culinary skills and an entrepreneurial spirit, led by a calling to the ministry to serve the church in a greater capacity. The applicant became an ordained minister in 2016 and since then has provided valuable service to his pastors and the congregation.

b. Ms. K.L., a business partner of the applicant, describes him as an outstanding individual with a remarkable set of qualities, who consistently demonstrates his willingness to go above and beyond to help others. He has a remarkable character, exceptional skills, outstanding work ethic, and the ability to stay positive whenever in a stressful situation. During the 6 months that Ms. K.L. has known the applicant, they successfully opened a restaurant together, where he is employed as a team leader and was recognized as employee of the month for June 2023.

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

a. He enlisted in the Regular Army on 30 April 1971.

b. A DD Form 458 (Charge Sheet), dated 31 August 1971, indicated that court-martial charges were preferred on the applicant for one specification of being absent without leave (AWOL) from on or about 2 August 1971. The through date of the charge was not included.

c. An Extract of Special Orders Number 210 dated 29 October 1971, shows the applicant was apprehended by civilian authorities and returned to military control on 20 October 1971 in Philadelphia, PA.

d. A DD Form 458, dated 2 November 1971, indicated that court-martial charges were preferred on the applicant for one specification of being absent without leave (AWOL) from on or about 2 August 1971 until on or about 18 October 1971.

e. The service record includes the applicant's medical examinations, dated 10 November 1971, for the purpose of administrative separation which indicated he was generally in good health. The applicant was marked qualified for separation.

- Standard Form (SF) 88 (Report of Medical Examination)
- SF 93 (Report of Medical History)

f. A Fort George G. Meade (FGGM) Form 17 (Request for Discharge for the Good of the Service) dated 18 November 1971, shows, after consulting with legal counsel, the applicant requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- he had not been subjected to coercion with respect to this request for discharge, and had been advised of the implications that are attached to it
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Undesirable Discharge Certificate
- he may be deprived of many or all Army benefits
- he may be ineligible for many or all benefits administered by the Veterans Administration
- he may be deprived of his rights and benefits as a Veteran under both Federal and State Law
- he may expect to encounter substantial prejudice in civilian life

g. On 17 December 1971, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, for the good of the service. He would be issued an Undesirable Discharge Certificate.

h. On 17 December 1971, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 4 months and 22 days of active service with 86 days of lost time. He was assigned separation program number (SPN) 246 and the narrative reason for separation is listed as "For the Good of the Service," with reentry code 3.

5. On 10 November 1980, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

7. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, under the Uniform Code of Military Justice and the Manual for Courts-Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Undesirable Discharge Certificate will normally be furnished an individual who is discharged for the good of the service.

8. 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 considered the applicant's post service achievements of becoming an ordained minister and his successful partnership in opening a restaurant. The Board noted, the applicant's character letters of support that attested to his work ethic, character as a team leader and his outreach within his church.

2. However, the Board found the applicant completed 4 months and 22 days of active service with 86 days of lost time. Consideration was given to the fact the applicant accepts responsibility for his actions and was remorseful with his application, demonstrating he understands his actions were not that of all Soldiers. The Board determined, the applicant was apprehended by civilian authorizes, finding insufficient evidence of ins-service mitigating factors to overcome the misconduct of being AWOL for 88 days. 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.

3. 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.

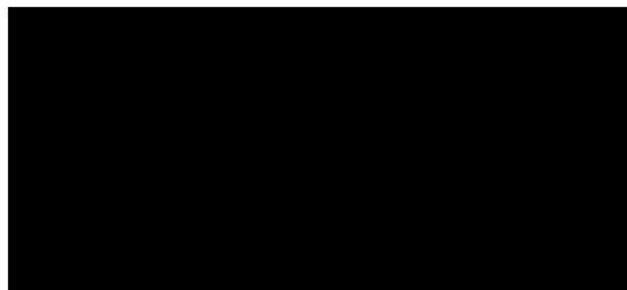
BOARD VOTE:

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.



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 (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, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets for the authority for separation of enlisted personnel and the criteria governing the issuance of Honorable, General, and Undesirable Discharge Certificates.

a. An honorable is a separation with honor. Issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty during the member's current enlistment or current period of service with due consideration for the member's age, length of service, grade, and general aptitude.

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. A general discharge may be issued if an individual has been convicted of an offense by general-court-martial or has been convicted by more than one special court-martial in the current enlistment period or obligated service or any extension thereof.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for which, under the Uniform Code of Military Justice and the Manual for Courts-Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Undesirable Discharge Certificate will normally be furnished an individual 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//