

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 October 2024

DOCKET NUMBER: AR20240000937

APPLICANT REQUESTS: in effect, an upgrade of his under other than honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)

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 honorable. He was drafted in 1969 even though he had polio as a child and as a result, he had one leg smaller than the other in circumference and length. He wore a size 9.5 on his right foot and size 10 on his left. He was issued a size 9.5 shoe making it painful to wear on his left foot. He complained about the wrong boot size but was ignored. He was angry for not getting the right size boots for both feet. This subsequently led to his misbehavior in the Army. He did, however, complete basic and advanced individual training. After multiple attempts to get out of the Army, he filed for conscientious objector status. On one occasion, his misconduct included mowing three twenty-five foot peace signs on the Commanding General's headquarters lawn. He believes that finally resulted in attention to his cause. He was given an undesirable discharge. He now feels after all these years, his attitude for the country has changed.
3. A review of the applicant's service record shows:
 - a. He was inducted into the Army of the United States on 6 March 1969.

b. On 1 October 1969, he was convicted by a special court-martial of three specifications of breaking restriction; one specification of breaking arrest in quarters, and one specification of failure to obey a lawful order from a superior noncommissioned officer (NCO). His sentence included confinement for two months, forfeiture of \$75.00 pay per month for 3 months, and reduction to private (PVT), E-1.

c. On 3 October 1969, the convening authority approved the sentence and ordered it duly executed, but the execution of that portion thereof adjudging confinement at hard labor in excess of 1 month was suspended for 1 month, unless the suspension was sooner vacated.

d. On 7 November 1969, 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). 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
- he would 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

e. On 19 November 1969, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for the good of the service. He would be issued an Undesirable Discharge Certificate.

f. On 3 December 1969, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 7 months and 10 days of active service with approximately 48 days of lost time. He was assigned separation number 246 in accordance with AR 635-200, Chapter 10.

4. On 25 May 1978, the applicant was notified 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.

5. On 12 December 1978, the Office of the Adjutant General, Reserve Components Personnel and Administration Center notified the applicant based on a recent court order, he was entitled to a new review of his case.

6. On 2 July 1987, the ABCMR's historical database indicated a final decision was made on Docket # AD 7X 23728. The Warrior Alliance (TWA) Veterans Project Clinic was notified no change was made to his discharge.

7. 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.

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.

9. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant has applied to the ABCMR requesting an upgrade of his 3 December 1969 discharge characterized an under conditions other than honorable. He states:

"I got drafted in 1969 with polio as a child. I have physical leg differences in my legs and feet. I was issued incorrect boot size. When I complained about the wrong size boots I was ignored. I have one leg smaller than the other in circumference and length, I have size 9 1/2 right foot and size 10 on my left. I was given size 9 1/2 which made my left foot in pain.

You could say I was angry for not getting the right size boots to fit both feet. This led to my misbehavior in the Army. I did complete basic and AIT [advanced individual

training]. After multiple attempts to get out of the Army, I filed for conscientious objector. I was then given an undesirable discharge.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 9 March 1969 and was discharged on 3 December 1969 under the provisions provided in chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel: Discharge for the Good of the Service. His separation program number of 246 denotes “Discharge for the good of the service.”

d. No medical documentation was submitted with the application and his period of service predates the EMR.

e. On 3 October 1969, a Special Court Marital found the guilty of breaking restriction and breaking arrest.

f. The applicant subsequently voluntarily requested discharge for the good of the service in lieu of trial by court-martial.

g. On 8 November 1969, the battalion commander recommended against approval of the applicant’s request:

“Private [Applicant], at one time, appeared to be progressing well towards being a soldier. He completed BCT [basic combat training] with no difficulty and was doing well in AIT until he was alerted for RVN [Republic of Vietnam]. At this time his performance changed radically.

Apparently, he reverted back to use of drugs and his actions seemed to be guided mainly by a distaste of going to RVN--probably cowardice. I believe there might be a chance for rehabilitation, and, therefore, believe Private [Applicant] should stand trial for the charges presently facing him.”

h. On 13 November 1969, the acting brigade commander recommended approval of the applicant’s request:

“Subject EM [enlisted member] is pending his second court-martial on charges of willful disobedience of his superior commissioned officers. He has, since his arrival in the 3d AIT Brigade, been a near constant disciplinary problem, as is evidenced by his previous court-martial for violations of Articles 91, 95, and 134, UCMJ. It is felt

that the best interests of the service would be served through the approval of EM's request for discharge in lieu of court-martial.”

i. On 19 November 1969, his request was approved by the commanding general.

j. JLV shows he is not registered with the VA.

k. Sore feet and/or improperly fitting military uniforms/equipment do not impair one's ability to differentiate right from wrong and adhere to the right.

l. It is the opinion of the ARBA medical advisor that a discharge upgrade is unwarranted.

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 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 charged with an offense 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 found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's contention of a physical leg difference; however, reviewed and concurred with the medical advisor's review finding sore feet and/or improperly fitting military uniforms/equipment do not impair one's ability to differentiate right from wrong and adhere to the right. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

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 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 and/or in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

3. 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.

4. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//