

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 September 2024

DOCKET NUMBER: AR20240001182

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable and a change to his narrative reason for separation.

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

- DD Form 293 (Application for the Review of Discharge)
- self-authored statement, undated
- Certificate of Military Service, 6 January 1975

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 enlisted in the Army to impress his pregnant high school sweetheart, gain his father's approval, and because he believed he was ready to take on the demands of manhood. He tried to do the right thing during his enlistment by getting married and providing for his wife and two sons. However, his military pay was insufficient to sustain his family, so he went absent without leave (AWOL) to spend time with his family and work odd jobs to make money. The Army discharged him due to his multiple AWOLs, which were a result of his immaturity and inability to make sound decisions between the ages of 17 and 22. He does not recall having to work for a non-profit organization for a set amount of time after his discharge but does recall working for the Essex County jail for two plus years and the Northern State Prison for four to five plus years. He is a certified tax preparer/site coordinator for United Way Northeast Florida.

3. The applicant enlisted in the Regular Army on 11 March 1968, for 3 years. The highest rank/grade he held was private first class/E-3.

4. Special Court-Martial Order (SPCMO) Number 2061, issued by Headquarters Special Troops, Fort Dix, NJ on 24 July 1969, shows the applicant was found guilty of one specification of being AWOL from his unit on or about 10 February 1969 and did remain so absent until on or about 11 June 1969.

a. He was sentenced to confinement at hard labor for three months. The sentence was adjudged on 15 July 1969.

b. The convening authority approved and ordered the sentence duly executed.

5. SPCMO Number 2230, issued by Headquarters Special Troops, Fort Dix, NJ on 18 August 1969, directed the unexecuted portions of the sentence to confinement at hard labor for 3 months suspended effective 22 August 1969 for 3 months at which time unless sooner vacated, would be remitted without further action.

6. On 21 April 1970, the applicant underwent a complete medical examination as part of his consideration for discharge due to his misconduct. His medical examination noted, he was qualified for separation.

7. SPCMO Number 1099, issued by Headquarters Special Troops, Fort Dix, NJ on 14 May 1970, shows the applicant was found guilty of three specifications of being AWOL from his unit on or about:

- 28 September 1969 and did remain so absent until on or about 21 October 1969
- 12 November 1969 and did remain so absent until on or about 23 February 1970
- 16 March 1970 and did remain so absent until on or about 14 April 1970

a. He was sentenced to confinement at hard labor for four months and reduction to private/E-1. The sentence was adjudged on 7 May 1970.

b. The convening authority approved and ordered the sentence duly executed.

8. SPCMO Number 540, issued by U.S. Army Correctional Training Facility, Fort Riley, KS on 28 July 1970, directed all unexecuted portions of the sentence to confinement at hard labor remitted effective 5 August 1970.

9. A DA Form 188 (Extract Copy of Morning Report) shows, effective 8 September 1970, the applicant's unit reported him AWOL, and on 25 October 1970 he was dropped from the rolls.

10. His record contains a letter to the applicant from the Army, dated 3 December 1974, that indicates the applicant requested and he was eligible to

participate in the program established by Presidential Proclamation 4313 of 16 September 1974.

11. Special Orders Number 2 Extract, issued by U.S. Army Administration Center and Fort Benjamin Harrison, Fort Benjamin Harrison, IN on 3 January 1975, shows the applicant's duty status changed to return to military control when he surrendered to military authorities on 2 January 1975.

12. On 3 January 1975:

a. The applicant again underwent a complete medical examination as part of his consideration for discharge due to his misconduct. His medical examination noted, he was qualified for release from active duty.

b. The applicant consulted with counsel and was advised of the President's Clemency Program under Proclamation 4313, its effect, and the rights available to him. He agreed to sign a Reaffirmation of Allegiance, a Pledge of Public Service, and to accept an undesirable discharge.

1) He elected to submit a statement in his own behalf for consideration by the alternate service board.

2) In his statement to the alternate service board, he listed not earning enough money to take care of his family, a false enlistment contract promise to send him to computer school, and his command's refusal to promote him because he was new in the company as reasons for his AWOL from military service. He also wanted the Board to know that he held four jobs and was a full-time college student during his absence.

13. On an undisclosed date, the Joint Alternative Service Board established by Presidential Proclamation Number 4313 reviewed the applicant's official records and determined he would be required to serve 22 months of alternative service.

14. The applicant was discharged on 6 January 1975, in the grade of E-1, under the provisions of Presidential Proclamation 4313, for the good of the service by reason of a willful and persistent unauthorized absence. His service was characterized as UOTHC, with separation program designator code "KNL (Good of the Service)" and reenlistment code "RE-4." He was credited with 1 year, 3 months, and 28 days of active service. His DD Form 214 (Report of Separation from Active Duty) contains the following entries in item 27 (Remarks):

- time lost before normal expiration of term of service: 609 days
- time lost after normal expiration of term of service 10 March 1971: 1386 days

- member has agreed to serve 22 months of alternate service pursuant to Presidential Proclamation 4313

15. The applicant's record contains a letter issued by the National Headquarters, Selective Service System, dated 22 September 1976, that shows he was terminated from the Reconciliation Service Program because he left his approved job without authorization and had been non-cooperative with additional efforts to place him in another approved job.

16. The applicant provides a copy of a certification of military service showing that his service in the Army was terminated by an undesirable discharge.

17. The applicant petitioned the Army Discharge Review Board (ADRB) for upgrade of his service characterization. On 13 May 1981, he was notified that after careful consideration the ADRB determined he was properly and equitably discharged.

18. Proclamation 4313 in effect at the time provided that Soldiers who were in an AWOL status, were afforded an opportunity to return to military control, elected a UOTHC discharge and satisfactorily completed alternate service of not more than 24 months as directed by the Joint Alternate Service Board would receive a clemency discharge. The evidence of record shows the applicant did not satisfactorily complete his agreed upon alternate service.

19. The Board should consider the applicant's argument and evidence, along with the overall 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 counsel's statement, 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, available military records and medical review, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the multiple periods of AWOL. The applicant provided no character letters of support for the Board to weigh a clemency determination.

2. The Board agreed, based on the preponderance of evidence the narrative reason for separation was not in error or unjust and relief is not warranted. The Board determined

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 honorable 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. Presidential Proclamation 4313 (PP 4313), dated 16 September 1974, was issued by President Ford, and affected three groups of individuals. One group was members of the Armed Forces who were in an unauthorized absence status. These individuals were afforded an opportunity to return to military control and elect either a discharge under other than honorable conditions under PP 4313 or to stand trial for their offenses and take whatever punishment resulted. For those who elected discharge, a Joint Alternate Service Board composed of military personnel would establish a period of alternate service of not more than 24 months that the individuals would perform. If they completed the alternate service satisfactorily, they would be entitled to receive a Clemency Discharge. The Clemency Discharge did not affect the underlying discharge and did not entitle the individual to any benefits administered by the Veterans Administration (VA). The clemency discharge did not affect the individual's underlying discharge and did not entitle him to any VA benefits. Rather, it restored federal and, in most instances, state civil rights that may have been denied due to the less than honorable discharge.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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.

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/NR) 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 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//