

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 September 2024

DOCKET NUMBER: AR20240001523

APPLICANT REQUESTS: 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)
- Four Letters of Support

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 an orphaned child and was on the streets after his mom passed away when he was 13 years old; his father had passed away prior to his mom. He was in and out of foster homes and was given a choice of jail or the military. His first duty station was in Korea right after the Vietnam War, there he was introduced to a variety of illegal substances. He states he experienced racism and degradation daily while he was also encouraged to do things to cope with the abuse. He was a young man trying to find himself when the incident occurred, since then he has been a productive citizen, husband, grandfather, deacon and business owner. He has not been in any trouble since his discharge and has dedicated his life to being a pillar in the community.
3. The applicant provides four letters of support from leaders in his community – pastors, deacons, friends, and employers he has known for over 30 years:
 - a. Ms. LMT. is the neighbor of the applicant and states she has known him since 2021 and he has proven himself to be a man of integrity, honor and faith. The applicant and his wife have been a great help to her and constantly seek ways to help others

within their community. Some of the good deeds they provide the community is food, transportation, and prayer to those in need. She states the applicant has proven repeatedly that there are still good people in the world.

b. Ms. AJS states she has known the applicant for many years as a church member and a deacon and can attest to his outstanding character. He possesses integrity, respect, loyalty, and trustworthiness and is always aspiring to learn more in an effort to provide supportive services to the church and pastor. He has a proven record for being consistent, dedicated, passionate, enthusiastic, cheerful, and very dependable. A pleasure to be around.

c. Reverend JR states the applicant served as his Head Deacon for many years and it is an honor to endorse him. He observed a high degree of integrity, responsibility, and ambition when he worked with him on the deacon board. He has witnessed spiritual and character growth in him. He believes the applicant is a man of integrity and excellence; a kind and caring individual with a purpose in life to serve individuals and is a man you can count on.

d. Mr. DVR met the applicant through his in-laws; he helped them around their farm and assisted them when they fell ill. He has witnessed his love for his family, friends, church, and community. The applicant relayed that he had served in the Army and made some bad decisions and since that time he has been on a redemption tour to save as many people as he could and asked for this letter so he can show his grandkids that he served honorably and loves this country. He is a highly intelligent hard worker who never loses sight of his goals and is also a fine person with a great deal of integrity who he is proud to call a friend.

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

a. He enlisted in the Regular Army on 27 March 1972.

b. The applicant's DA Form 20 (Enlisted Qualification Record) shows the applicant had all excellent conduct and efficiency ratings until he was sent to U.S. Army Pacific.

c. The applicant accepted nonjudicial punishment on the following occasions:

- 26 December 1972 – for one specification of being absent from his place of duty on 22 December 1972 and one specification of being absent without leave (AWOL) from on or about 23 December 1972 until 26 December 1972.
- 13 August 1973 – for one specification of failure to report to his appointed place of duty on 6 August 1973; his punishment included reduction to private (PV2/E-2), suspended for 90 days

- 18 October 1973 – for one specification of AWOL from on or about 24 September 1973 to one about 2 October 1973; his punishment included reduction to PV2/E2

d. Special Orders Number 29 dated 29 January 1974, show the applicant was confined in Yongsan, Korea, after being returned to military control from AWOL status.

e. On 31 January 1974, the applicant underwent a mental evaluation. The Flight Surgeon noted the applicant was had no significant mental illness, was mentally responsible, and had the mental capacity to understand and participate in board proceedings.

f. On 31 January 1974, the applicant underwent a medical examination for the purpose of discharge. He was marked qualified for discharge.

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

g. On 24 January 1974, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Separations). The specific reasons for his proposed recommendation were patterns of shirking and introducing a controlled substance onto an Army installation.

h. On 24 January 1974, after consulting with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he may be issued an undesirable discharge under conditions other than honorable
- he may be ineligible for many or all benefits as a Veteran under both Federal and State Laws
- he elected not to submit matters

i. On 24 January 1974, the immediate commander-initiated separation action against the applicant under the provisions of AR 635-200, Chapter 13, for unfitness, pattern of shirking. The intermediate commander recommended approval of the discharge.

j. On 19 February 1974, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation, under the provisions of Chapter 13, AR 635-200, for discharge for unfitness.

He would be issued an Undesirable Discharge Certificate and reduced to the lowest enlisted grade.

k. On 26 February 1974, he was discharged from active duty with a under other than honorable conditions characterization of service. His DD Form 214 (Report of Separation from Active Duty) shows he completed 1 year, 9 months, and 16 days of active service with 74 days of time lost. He was assigned separation designator 386 and the reason and authority for separation listed as "Para 13-5a(4) AR 635-200 with reentry code 3. It also shows he was awarded or authorized:

- National Defense Service Medal
- Armed Forces Expeditionary Medal
- Marksman Marksmanship Qualification Badge with Rifle Bar
- Expert Marksmanship Qualification Badge with Hand Grenade Bar

5. On 22 September 1981, the applicant was notified the Army Discharge Review Board reviewed the applicant's discharge processing but found he was properly discharged. The ADRB denied his request for a change in the type and nature of his discharge.

6. By regulation (AR 635-5), 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.

7. By regulation (AR 635-200), action will be taken to separate an individual for unsuitability when it is clearly established that It is unlikely that he will develop sufficiently to participate in further military training and/or become a satisfactory Soldier.

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 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 and available military records, the Board

determined there is insufficient evidence of in-service mitigating factors to overcome the multiple periods of AWOL. The Board noted, the applicant's post service achievements and numerous character letters of support attesting to his integrity, work ethic, community engagement and serving as the head deacon for his church.

2. However, the Board agreed, the applicant's 40 years of selfless service to his church and community could not outweigh his multiple AWOL. 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. Army Regulation 635-5 (Separation 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 Separations), 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 13 of the regulation states action will be taken to separate an individual for unsuitability when it is clearly established that it is unlikely that he will develop sufficiently to participate in further military training and/or become a satisfactory Soldier. An individual separated by reason of unfitness will be furnished an undesirable discharge certificate, except that an honorable or general discharge certificate may be issued if the individual has been awarded a personal decoration or if warranted by the particular circumstances in his case.

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//