

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 October 2024

DOCKET NUMBER: AR20240001574

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 20 November 2023
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 13 March 1969
- Noncommissioned Officers' Academy Certificate, 17 October 1969
- photo

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, while serving in Germany he received a telegram from the Red Cross, that his dad had a life-threatening heart attack, and he should go home. His company commander gave him 10 days of leave, his dad's heart was bad and was not getting better. He went to the closest installation and requested a compassionate reassignment. He received paperwork from his father's doctor to fill out, the doctor continued to fill out the form incorrectly, and by the third time of filling it out incorrectly, he just stayed and took care of his father. He went to the Pentagon to turn himself in, without apprehension, and after his discharge he took care of his father until he passed in February 1975.
3. The applicant enlisted in the Regular Army on 30 December 1966, for a period of 3 years. He was awarded the military occupational specialty of 11D (Armor Reconnaissance Specialist). He was honorably discharged for the purpose of immediate reenlistment on 13 March 1969, in the grade of E-5. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he served

2 years, 2 months, and 14 days of net active service and was awarded the National Defense Service Medal.

4. He conducted an immediate reenlistment on 14 March 1969, for an additional period of 6 years.

5. The applicant was reported as a deserter, wanted by the Armed Forces on 13 April 1972. He was reported as absent without leave (AWOL) on 15 February 1972 and reported as dropped from rolls on 15 March 1972.

6. Court-martial charges were preferred against the applicant on 4 December 1974, for violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL, from on or about 15 February 1972 and remaining AWOL until on or about 2 December 1974.

7. On 3 December 1974, the applicant elected option under the President's Amnesty Program and requested his case to be processed under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service).

8. On 3 December 1974, the applicant's immediate commander recommended disapproval on the applicant's request for discharge for the good of the service. Stating the applicant was AWOL from 15 February 1972 to 2 December 1974, a total of 1,020 days lost.

9. The applicant's intermediate command recommended approval the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, due to the applicant fitting the President's Amnesty Program.

10. On 20 December 1974, the staff judge advocate recommended approval of the applicant's request for discharge and further recommended he receive an undesirable discharge.

11. On 23 December 1974, the separation authority approved the applicant's request for discharge for the good of the service. Further directing the applicant be furnished an undesirable discharge and he be reduced to the lowest enlisted grade of E-1.

12. The applicant was discharged on 9 January 1975, under the provisions of AR 635-200, Chapter 10, discharge for the good of the service, in the grade of E-1. His DD Form 214 shows his character of service was under other than honorable conditions, with separation program designator code KFS and reenlistment code RE-4. He was credited with completion of 3 years, 2 months, and 12 days of net active service, with 1,021 days of lost time from 15 February 1972 to 1 December 1974.

13. The applicant additionally provides his noncommissioned officers' academy certificate, showing he graduated on 17 October 1969 and a picture depicting a Soldier receiving an award.

14. Discharges under the provisions of Army Regulation 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, a discharge under other than honorable conditions is normally considered appropriate.

15. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

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 determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of being AWOL for 1,021 days.

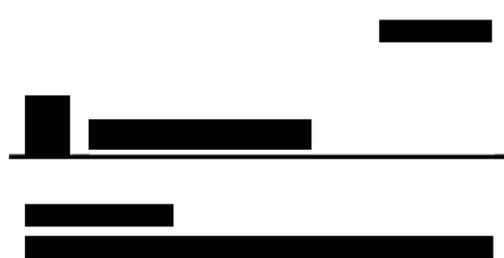
2. The Board under liberal consideration, recognized the applicant's prior period of honorable service. However, the Board noted the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board agreed the applicant has not 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. Therefore, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
  - a. Chapter 10 of that 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, a discharge under other than honorable conditions 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.

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/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 rather 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, Boards 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//