

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 November 2024

DOCKET NUMBER: AR20240002498

APPLICANT REQUESTS: an upgrade of his characterization of service.

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)

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 was 20 years old and was not receiving money because he had no postal address at Fort Rucker, AL. The money was sent to a Puerto Rico address. Because of his young age he made a wrong decision to take an airplane to Boston where his sister was living, then flew to Puerto Rico where he reported to Fort Buchanan, then he was sent back to Fort Bragg. He is a 69-year-old man with the need for medical service. He served 3 years, and he is respectfully requesting to change his discharge.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 27 March 1973. The highest grade he held was private (PV2)/E-2.
 - b. DA Form 4187 (Personnel Action) shows his duty status changed from Dropped from Rolls (DFR) to Present for Duty (PDY) on 9 July 1976. The remarks section of this document shows he went Absent Without Leave (AWOL) on 22 March 1974.
 - c. DA Form 3836 (Notice of Return of US Army Member from Unauthorized Absence) shows he surrendered to military authorities on 9 July 1976.

d. On 12 July 1976, after consulting with legal counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial under Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. The applicant acknowledged he made the request of his own free will and was not coerced by any person. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to at least one of the charges against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veteran's Administration, he could be deprived of his rights and benefits as a veteran under both Federal and State law and encounter substantial prejudice in civilian life because of an under other than honorable discharge. He elected to submit a statement in his own behalf.

e. On 12 July 1976, the applicant stated that he wanted to get out of the Army because his father was sick, and he could not adjust to military life. Also, him being there, he could not help his father nor his mother.

f. Court-martial charges were preferred against the applicant on 13 July 1976. His DD Form 458 (Charge Sheet) shows he was charged with one specification of being AWOL from on or about 22 March 1974 to on or about 9 July 1976.

g. On 14 July 1976, the immediate commander recommended approval of the discharge and issuance of an Undesirable Discharge Certificate. The commander noted that he personally interviewed the applicant, and the applicant stated his AWOL was caused by sickness in his family. The commander also noted that in view of the applicant's personal conduct, his attitude toward military life, and his lack of rehabilitative potential, he recommended approval of the requested discharge.

h. On 28 July 1976, the intermediate commander recommended approval of the discharge and recommended issuance of an Undesirable Discharge Certificate.

i. The separation authority approved the recommended discharge on 9 August 1976, directed the applicant be reduced to the lowest enlisted grade, and be issued an Undesirable Discharge Certificate (DD Form 258A).

j. The applicant was discharged on 24 August 1976. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of AR 635-200, chapter 10, in the rank/grade of private (PV1)/E-1, and his service was characterized as under other than honorable conditions. He completed 7 months of net active service during the covered period. This form also shows in:

- Item 9c (Authority and Reason): Chapter 10, AR 635-200, and SPD: “KFS”
- Item 10 (Reenlistment Code): RE-3
- Item 21 (Time Lost) (Preceding Two Years): 713 days; 555 days lost under Title 10, USC 972
- Item 26 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized): National Defense Service Medal)

4. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge processing within that board’s 15-year statute of limitations.

5. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

6. The Board should consider the applicant's 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 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 misconduct of being AWOL for over two (2) years. The Board noted, the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination.

2. The board noted the applicant’s service record exhibits numerous instances of misconduct during his enlistment period for 7 months of net active service during the covered period of which 555 days lost under Title 10, USC 972. Furthermore, 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 his under other than honorable conditions (UOTHC) discharge. Based on this, the Board denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|---|---|---|----------------------|
| : | : | : | 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 (AR) 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 provided that a member who 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. The discharge request may be submitted after court-martial charges are preferred against the member, regardless of whether the charges are referred to a court-martial and regardless of the type of court-martial to which the charges may be referred. The request for discharge may be submitted at any stage in the processing of the charges until final action on the case by the court-martial convening authority. Commanders will ensure that a member is not coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the member may elect to submit a request for discharge for the good of the service. The member will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a member who is discharged for the good of the service. However, the discharge authority may direct an honorable or general discharge if such are merited by the member's overall record during the current enlistment.

b. An honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable condition is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and for the good of the service.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 10 for the Good of the Service in lieu of court-martial would receive a separation code of "KFS."

4. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

5. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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//