

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 November 2024

DOCKET NUMBER: AR20240003109

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to under honorable conditions (General)
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- National Personnel Records Center (NPRC) Letter
- Character Letter A-S-
- Memorial Sheet
- Service Photographs
- Enlisted Record Statement, 29 August 1972
- DD Form 4 (Enlistment Contract – Armed Forces of the United States), 31 August 1972
- Special Orders Number 177, 31 August 1972
- DA Form 20 (Enlisted Qualification Record)
- Special Orders Number 252, 8 September 1972
- Family Letter informing dropped from rolls (DFR)
- Family Letter informing absent without leave (AWOL)
- Federal Bureau of Investigation (FBI) Investigation Report, 16 January 1973
- Special Orders Number 025, 26 January 1973
- Letter for U.S. Army Absentee Returned to Military Control, 19 October 1973
- Memorandum, subject: Request for Discharge for the Good of the Service Recommendation, 13 November 1973
- Memorandum, subject: Request for Discharge approval, 19 November 1973
- Special Orders Number 945, 11 December 1973
- Letter of Ejection, 11 December 1973
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), for the period ending 11 December 1973

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 shortly after his enlistment he faced an extremely difficult personal hardship with the illness and death of his father. He faced this hardship at the age of 17 and the emotional distress was never taken into account at the time of his discharge. He had disagreed with the classification of his discharge during that time but was advised by his leadership not to fight. However, he has never felt this was right and is looking to have his record corrected.
3. The applicant provides the following:
 - a. NPRC Letter showing the applicant requested and received copies of his service record.
 - b. Character Letter from his daughter, wherein she recounts the remorse and impact the service member's time in the Army had on him. He dealt with the loss of his mother at the age of 12, and, at the time of his enlistment at the age of 17, learning of the illness and death of his father. She also notes that, although he never made much money, he and his wife raised four children together and left a significant and positive impact on each of their lives, inspiring them to feel loved and succeed in life. He made bad choices while dealing with grief as a very young man, but he never allowed that to define who he was as a citizen to his country, a husband, or a father.
 - c. Memorial Sheets showing both his father's death on 13 April 1973, (he was a World War II veteran), and his mother's death on 9 January 1968.
 - d. Service photographs of his father in uniform and the awards he earned while enlisted during World War II.
 - e. Enlisted Record Statement, dated 29 August 1972 as unspecified supporting evidence of the applicant's enlistment in the Regular Army.
 - f. Special Orders Number 177, dated 31 August 1972 as unspecified supporting evidence of his enlistment in the Regular Army on 31 August 1972 and reporting date to basic combat training on 11 September 1972.
 - g. Special Orders Number 252, dated 8 September 1972 as unspecified supporting evidence of his enlistment in the Regular Army

h. Family Letter informing DFR notifying his father and mother of his absentee status since 9 September 1972.

i. Family Letter informing of his AWOL status since 12 June 1973.

j. Federal Bureau of Investigation (FBI) Investigation Report, dated 16 January 1973 showing he was apprehended in Syracuse, New York by the local police department.

k. Special Orders Number 025, dated 26 January 1973 showing he was returned to military control by civilian police.

l. Letter for U.S. Army Absentee Returned to Military Control, dated 19 October 1973 confirming his return to his unit and cancelling all previous unauthorized absences.

m. Special Orders Number 945, dated 11 December 1973 showing his discharge from active duty.

n. Letter of Ejection, dated 11 December 1973 notifying him that he had been discharged from active duty with an undesirable discharge.

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

a. On 31 August 1972, he enlisted in the Regular Army.

b. DA Form 3836 (Notice of Return of U.S. Army Member from Unauthorized Absence) shows he was apprehended by civil authorities and returned to military control on 15 January 1973 after being reported AWOL on 9 September 1972 and DFR on 8 October 1972.

c. On 26 January 1973, a DD Form 458 (Charge Sheet), shows he was charged with violation of the Uniform Code of Military Justice (UCMJ), Article 86, AWOL from on or about 9 September 1972 to on or about 15 January 1973. He waived his right to legal counsel.

d. DA Form 3836 (Notice of Return of U.S. Army Member from Unauthorized Absence) shows he was apprehended by civil authorities and returned to military control on 1 June 1973 after being reported AWOL and DFR on 24 April 1973.

e. DA Form 3836 (Notice of Return of U.S. Army Member from Unauthorized Absence) shows he was apprehended by civil authorities and returned to military control on 10 October 1973 after being reported AWOL and DFR on 12 June 1973.

f. After consulting with legal counsel he requested a discharge in lieu of trial by courts-martial under the provisions of chapter 10, Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations). He acknowledged:

- maximum punishment
- he was guilty of the charges against her 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 Under Other Than Honorable Conditions 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 her rights and benefits as a Veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life

g. On 19 November 1973, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge in lieu of trial by courts-martial. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

h. DD Form 214, shows he was discharged from active duty on 11 December 1973 under other than honorable conditions. He completed 5 months and 29 days and was awarded the National Defense Service Medal. Block 26a (Non-Pay Periods Time Lost) is as follows:

- 9 September 1972 – 14 January 1973
- 24 April 1973 – 31 May 1973
- 12 June 1973 – 10 October 1973

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

7. By regulation, 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/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.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 a non-violent 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 the characterization of service assigned during separation was too harsh for the nature of the misconduct and determined an under honorable conditions (General) characterization as more appropriate.
2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 11 December 1973 to show an under honorable conditions (General) characterization of service.

█

█ █

█
█

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 (Active Duty Enlisted Administrative 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 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/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. AR 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//