

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 November 2024

DOCKET NUMBER: AR20240003328

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

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

- DD Form 149 (Application for Correction of Military Record), 22 January 2024
- self-authored statement, 18 January 2024
- DD Form 214 (Report of Separation from Active Duty), 16 January 1974
- character reference statement, from T.L., 8 December 2023
- character reference statement, from Pastor A.A.W., 10 December 2023
- notarized character reference statement, from L.T., 3 January 2024
- Department of Veterans Affairs (VA) case, 22 January 2024

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 during his time while serving, he was young and not considerate about life. Eventually, he got married and his wife influenced his decision to go absent without leave (AWOL). He cannot blame her for his actions of going AWOL, he is sorry and asks for forgiveness.
3. The applicant enlisted in the Regular Army on 18 October 1972, for a 4-year period. He was awarded the military occupational specialty of 11B (Light Weapons Infantryman). The highest rank he attained was private/E-2.
4. The applicant received nonjudicial punishment (NJP) on 14 March 1973, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for failing to go to his prescribed appointed place of duty on or about 12 March 1973. His punishment imposed was forfeiture of \$79.00 for one month, restriction for 14 days, and extra duty for 14 days.

5. Court-martial charges were preferred against the applicant for violations of the UCMJ. The relevant DA Form 458 (Charge Sheet) is void in the applicant's official military personnel record.

6. Before a special court-martial on 10 October 1973 at Fort Bragg, NC, the applicant was found guilty of two specifications of violating the UCMJ, for going AWOL on or about 20 July 1973 and remaining AWOL until on or about 25 July 1973 and for going AWOL on or about 31 July 1973 and remaining AWOL until on or about 14 August 1973. He was sentenced to restriction for 60 days, to perform at hard labor without confinement for 60 days, forfeiture of \$100.00 pay per month for 3 months, and reduction to the grade of E-1. The sentence was adjudged on 5 September 1973. The sentence was approved and ordered to be duly executed.

7. On 16 October 1973, the applicant's immediate commander notified him of the intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13 (Separation for Unfitness or Unsuitability). He noted the applicant's frequent incidents of a discreditable nature with civil and military authorities.

8. On 17 October 1973, the applicant acknowledged the notification of elimination memorandum. He consulted with counsel and was advised of the basis for the contemplated action to separate him and of the rights available to him. He waived consideration, a personal appearance, and representing counsel by an administrative separation board and understood he may encounter prejudice in civilian life. Additionally, he elected to not submit a statement in his behalf.

9. On 29 November 1973, the applicant's immediate commander formally recommended his discharge for unfitness under the provisions of AR 635-200. He stated the discharge was recommended because of the applicant's several incidents of a discreditable nature with the military and civilian authorities, as evidenced by 11 worthless checks in less than a 3-month period in 1973, him being a chronic AWOL offender as evidenced by 5-periods of AWOL, and his numerous acts of misconduct. Additionally adding, all efforts towards rehabilitation have failed due to the applicant's complete disrespect for military authority.

10. On 29 November 1973, the applicant's intermediate commander recommended approval of the separation action.

11. On 20 December 1973, the separation authority approved the recommended discharge for unfitness and directed the issuance of an DD Form 258A (Undesirable Discharge Certificate).

12. The applicant was discharged on 16 January 1974, under the provisions of AR 635-200, in the grade of E-1. His DD Form 214 shows his service was characterized as under other than honorable conditions, with separation program designator (SPD) code 28B (unsuitability) and reenlistment code of RE-3. He completed 1 year, 1 month, and 1 day of active service with 58 days lost time. He was awarded or authorized the National Defense Service Medal, Parachute Badge, and Sharpshooter Badge.

13. The Army Discharge Review Board reviewed the applicant's request for an upgrade of his undesirable discharge on 28 October 2008. After careful consideration, the Board determined the overall merits of the applicant's case were insufficient as a basis for correction of his records. His request for relief was denied.

14. The applicant provides:

a. A character reference statement, from his family friend T.L., dated 8 December 2023, summarizing the applicant as a faithful member of his church, who she has the pleasure worshipping with. He is an upright, honest man, a good husband, and father, a man of little words whose compassion extends beyond the walls of church into his community. She believes the applicant is the epitome of a good man.

b. A character reference statement, from his Pastor A.A.W., dated 10 December 2023, summarizing the applicant as a man who has proven faithful to the "call" they share. He is consistent in his devotion to and cares for the people and place they have partnered to impact. He is hard-working, time-conscious, enjoys people, kind, considerate, and loyal. Pastor A.A.W. is proud of his determination and his commitment during difficult times and during COVID-19 when they were unable to attend church.

c. A character reference statement, from the applicant's niece L.N., dated 3 January 2024, who summarized the applicant as hard working within his community, with his neighbors, family members, and in his church. He has proven to be reliable, dependable, and courteous to all who he meets.

d. His case submitted to the Department of Veterans Affairs, showing he is in the process of requesting a discharge upgrade through the ABCMR.

15. AR 635-200, in effect at the time, set forth the basic authority for separation of enlisted personnel for unfitness or unsuitability. Chapter 13, paragraph 13-5a(1), provided for discharge due to unfitness because of frequent incidents of a discreditable nature with civil or military authorities.

16. 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:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial 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 separated for unsuitability. The Board majority noted the applicant provided documentation to support his request, including his personal statement and letters of reference to support clemency. The Board minority noted the applicant's frequent absent without leave periods. Based on a preponderance of the evidence, the Board majority concluded that an upgrade from other than honorable conditions to under honorable conditions (General) was warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial 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 16 January 1974 to show an under honorable conditions (General) characterization of service.
2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading his characterization of service to honorable.

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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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. An honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

2. Army Regulation 635-212 (Personnel Separations - Discharge - Unfitness and Unsuitability), then in effect, provided the policy and procedures for administrative separation of enlisted personnel for unfitness and unsuitability. It provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay just debts. This regulation also prescribed that an undesirable discharge was normally issued.

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//