

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 November 2024

DOCKET NUMBER: AR20240003517

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to either under honorable conditions (general) or honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- Character reference letters (4)

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 contacted by his mother who informed him that his father was unwilling to financially support the family. His mother was unable to work because she had to raise six children. Because the applicant was the eldest sibling, he was unofficially tasked with being the "man of the house." After receiving multiple phone calls from his mother for help, he made the tough decision to request a hardship discharge. He was told he would receive a favorable discharge, which was not the case. The values the Army instilled in him were honor, courage, and selfless service. As much as he intended on making a career in the Army, he had an obligation to take care of his family. Had he not come back home to help his mother and siblings, they would have likely ended up homeless. He thanks the Board for their time and consideration.
3. On 17 January 1964, the applicant enlisted in the Regular Army for 3 years. The highest grade he attained was E-3.
4. On 14 September 1965, the applicant was reported absent without leave (AWOL) and remained absent until he returned to military authorities on 14 October 1965.

5. On 22 October 1965, the applicant was reported as AWOL a second time, and remained absent until he returned to military authorities on 30 November 1965.
6. Before a special court-martial at Fort Campbell, KY, on 16 December 1965, the applicant was found guilty of two specifications of AWOL. The court sentenced him to confinement at hard labor for three months, and reduction to the grade of E-1. The sentence was approved on 20 December 1965, but that portion thereof adjudging confinement at hard labor for three months was suspended for three months, at which time, unless sooner vacated, the suspended portion of the sentence would be remitted without further action.
7. On 25 December 1965, the applicant was reported as AWOL a third time, and remained absent until he returned to military authorities on 16 February 1966.
8. Special Court-Martial Order Number 81, issued by Headquarters, Special Troops, Fort Campbell, KY, on 17 February 1966, noted the execution of the applicant's approved sentence to confinement for three months was vacated. He was committed to the post stockade, and his confinement would be served therein as the competent authority directed.
9. On 28 February 1966, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.
10. On 28 February 1966, the applicant's commander recommended the applicant's separation from service, under the provisions of Army Regulation 635-208 (Personnel Separations – Discharge – Undesirable Habits and Traits of Character), for unfitness. As the specific reason, the commander cited the applicant's record of AWOL and misconduct which could not be tolerated in the Army. Additionally, there was indication the applicant would go AWOL again if not discharged.
11. On 2 March 1966, the applicant underwent a psychiatric evaluation. The attending physician noted the essential points of the applicant's mental condition were antisocial personality, chronic, moderate, manifested by disregard for the usual social codes, repeated trouble with legal authorities (theft, forgery), chronic AWOL, and impaired judgment and insight. However; he was psychiatrically deemed to have the mental capacity to understand and participate in Board proceedings and cleared for administrative separation.
12. Special Court-Martial Order Number 99, issued by Headquarters, Special Troops, Fort Campbell, KY, on 4 March 1966, shows before a special court-martial at Fort Campbell, KY, on 3 March 1966, the applicant was found guilty of one specification of going AWOL from on or about 25 December 1965 until on or about 16 February 1966. The court sentenced him to confinement at hard labor for six months, and forfeiture of

\$62.00 per month for six months. The sentence was adjudged on 3 March 1966 and approved on 4 March 1966.

13. On 4 March 1966, the applicant consulted with legal counsel and acknowledged he had been advised of the basis of the action recommended. Following his consultation, he waived his right to have a hearing by a board of officers. He declined to submit a statement in his own behalf. He acknowledged he understood that as a result of issuance of an undesirable discharge, he may be deprived of many or all rights as a Veteran under both Federal and state laws, and that he may expect to encounter substantial prejudice in civilian life.

14. Consistent with the chain of command's recommendations, the separation authority approved the recommended separation action on 7 March 1966, and directed issuance of a DD Form 258A (Undesirable Discharge Certificate).

15. Special Court-Martial Order Number 113, issued by Headquarters, Special Troops, Fort Campbell, KY, on 9 March 1966, noted the unexecuted portion of the applicant's sentence to confinement at hard labor was remitted, effective 11 March 1966.

16. The applicant was discharged on 11 March 1966. His DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) shows he was discharged under the provisions of Army Regulation 635-208, paragraph 3c, with Separation Program Number 28B (Unfitness) and Reentry Codes 3, 3A, and 3B. His service was characterized as UOTHC. He completed 1 year and 9 months of net active service, with 145 days of lost time. He did not complete his first full term of service.

17. The applicant provides four character reference letters that collectively attest to his faith, integrity, honor, and trustworthiness. The applicant's brother recalls their family struggles and their mother's request for the applicant to come home and help.

18. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The evidence shows, following a series of misconduct (AWOL and three court-martial convictions), the applicant's chain of command initiated separation action against him. The applicant was discharged for unfitness/misconduct with an under other than

honorable conditions characterization of service. The Board found no error or injustice in his separation processing. The applicant provides character reference letters that collectively attest to his faith, integrity, honor, and trustworthiness; however, the Board determined his clemency related documents do not outweigh the misconduct for which he was discharged. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body."

3. Army Regulation 635-200 (Personnel Separation – General Provisions for Discharge or Release) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. An honorable discharge certificate will be furnished when the individual meets the following qualifications:

- Has conduct ratings of at least "Good"
- Has efficiency ratings of at least "Fair"
- Has not been convicted by a general court-martial
- Has not been convicted more than once by a special court-martial

b. Individuals discharged under honorable conditions which do not qualify them for an honorable discharge will be furnished a general discharge. Officers effecting discharge are authorized and required to deviate from these criteria and furnish an honorable discharge when, after considering all aspects of the individual's service, it appears that furnishing a general discharge would not be in the best interest of the service or the individual.

4. Army Regulation 635-208 (Personnel Separations – Discharge – Undesirable Habits and Traits of Character) in effect at the time, set forth the policy for administrative separation for unfitness. Paragraph 3 provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: (a) frequent incidents of a discreditable nature with civil or military authorities, (b) sexual perversion, (c) drug addiction, (d) an established pattern of shirking, and/or (e) an established pattern showing dishonorable failure to pay just debts. This regulation prescribed that an undesirable discharge was normally issued unless the particular circumstances warranted a general or honorable discharge.

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 (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.

//NOTHING FOLLOWS//