

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 November 2024

DOCKET NUMBER: AR20240003538

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to honorable.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record), 1 January 2024
- Self-Authored Statement
- DD Forms 214 (Armed Forces of the United States Report of Transfer or Discharge), for the period ending 30 July 1973
- Marriage Certificate, 17 December 1980
- Federal Insurance Contribution Act (FICA) earnings statement, 14 December 2023
- license to carry firearms identification card, 8 August 2023

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 there was a war going on and he wanted to enlist after completing high school. He got married before going overseas with the intention of raising a family when he returned. However, things got complicated and it did not work out the way he wanted.

a. When he went overseas, he and his spouse agreed that he would get settled and get an apartment for his family to join him. He went home on leave to be there when his daughter was born and remembers feeling something was not right. He went back to Germany and continued to plan for his spouse and daughter to live with him. When he was going for his sergeant stripes, he found out his wife was not coming overseas to live with him, and she was living with someone else; he did not handle it well. He felt

trapped because he was halfway around the world and had a difficult time dealing with the situation.

b. He became angry with a bad attitude; he received some nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ). However, he did not kill or harm anyone, he just had issues dealing with Army Regulations. He states the Army had enough of his attitude and he was given a bad discharge. He requested to be reassigned to Vietnam, but his first sergeant would not sign his paperwork. Things did not work out as he planned while serving. However, he has now been married to his second wife for over 45 years and has two sons who are doing well.

3. The applicant enlisted in the Regular Army on 24 August 1970, for a period of 3 years. He was awarded the military occupational specialty of 64C (Motor Transport Operator). The highest rank he attained was specialist four/E-4.

4. Two DA Forms 2627-1 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), show:

a. The applicant accepted nonjudicial punishment under Article 15, UCMJ, on 14 December 1971, for willfully disobeying a lawful order from his superior noncommissioned officer on or about 13 December 1971, by failing to clean the shower room in the billets. His punishment imposed was forfeiture of \$48.00 for one month and extra duty for 14 days.

b. He accepted nonjudicial punishment under Article 15, UCMJ, on 20 March 1972, for willfully disobeying a lawful order from his superior noncommissioned officer on or about 11 March 1972 by failing to go on police call and for being disrespectful in language towards his superior noncommissioned officer on or about 11 March 1972. His punishment imposed was reduction to the grade of E-3, forfeiture of \$71.58 for one-month, extra duty for 14 days, and restriction for 14 days.

5. Court-martial charges were preferred against the applicant for violations of the UCMJ. The relevant DD Form 458 (Charge Sheet) is not available for review.

6. Before a summary court-martial on 2 February 1973, at Bad Kreuznach, Germany, the applicant was found guilty of one specification of wrongfully appropriating a truck, the value of \$2,948.00, property of the United States Government on or about 20 December 1972. He was sentenced to forfeiture of \$75.00 per month for one month, reduction to the grade of E-2, and restriction for 21 days. The sentence was adjudged on 2 February 1973. It was approved and ordered to be duly executed on 8 February 1973.

7. Court-martial charges were preferred against the applicant, for violations of the UCMJ on 15 June 1973. The relevant DD Form 458 shows he was charged with two specifications of violating a lawful general regulation by having 0.35 grams, more or less, of amphetamine in his possession on or about 20 September 1972 and for by having 0.01 grams, more or less, of hashish in his possession on or about 20 September 1972.

8. He consulted with legal counsel on 5 July 1973, and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of a UOTHC character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. He acknowledged that he may be deprived of many rights and benefits as a Veteran under both Federal and State law. Additionally, he elected to not submit a statement in his own behalf.

9. On 9 July 1973, the applicant's immediate commander recommended approval of his request for separation and further recommended issuance of an undesirable discharge. Additionally adding, given the applicant's summary court-martial conviction, two article 15s, along with adverse conduct and efficiency ratings, surveillance for possible drug abuse and trafficking of drugs, it was in his opinion that the applicant was no longer suitable for further military service and should be released as expeditiously as possible.

10. The applicant's intermediate commanders recommended approval of his request for separation and issuance of an undesirable discharge.

11. The separation authority approved the applicant's request for discharge for the good of the service on 17 July 1973. He further directed the applicant be furnished an Undesirable Discharge Certificate and reduced to the lowest enlisted grade of E-1.

12. The applicant's DD Form 214 shows he was discharged on 30 July 1973, under the provisions of AR 635-200, for the good of the service, in the grade of E-1. His

characterization of service was UOTHC, with separation program number 246 and reenlistment code RE-3, EC. He was credited with 2 years, 11 months, and 7 days of active service this period.

13. The applicant additionally provides his certificate of marriage showing he married on 17 December 1980; his FICA earnings statement showing his summary of earnings for the years from 1968 to 2022; and a photocopy of his license to carry firearms identification card.

14. Administrative separations under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service. A characterization of service of 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 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 charged an 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 noted the applicant's contention of being at war and enlisting after getting married at a young age and the desire to start a family. The Board determined the applicant's under other than honorable conditions discharge was harsh for the offense committed and he has raised a family despite his characterization of service. The Board concluded an upgrade to under honorable conditions (General) was appropriate.

2. The Board found insufficient evidence to support the applicant's requested relief to grant a discharge to honorable.

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 30 July 1973, 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 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.

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 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 conditions other than honorable 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.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards (DRBs) 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 on the basis of 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.

//NOTHING FOLLOWS//