

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 December 2024

DOCKET NUMBER: AR20240003801

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

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)
- Self-Authored Statement
- Department of Veteran Administration (VA) Summary of Discharge
- Certificate of Live Birth

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 in the National Guard in Bernie, Missouri (MO), which was about 70 miles south of my hometown of Cape Girardeau, Mo., for well over 5 years. His wife was pregnant and diagnosed as " High Risk " during the periods of his absent without leave (AWOL). Problems started in February/March of 1974 and by August he was discharged. He had no family or friends that could help care for her during her pregnancy, delivery or after care. He would call down to Bernie and request weekends off, but they went by the book and soon discharged him. He was immediately called to active duty and to report to Fort Leonard Wood Missouri which is about 200 miles of bad road (in the late 60s and early 70's) to the west of his home. He drove back and forth trying to care for his wife who gave birth in October of 1974. With a new baby and his wife bed ridden and an obligation to the Army at the same time. He had car troubles or had trouble leaving home and would be late to report in. Being late was the same as AWOL, but he tried to do right. He was advised at Leonard Wood to apply for a discharge instead of going to Korea. He was advised the discharge would be under conditions other than honorable. He states he did not know what the character of

service meant. He thought when you were AWOL it was considered a minor offense since all of them were because he was taking care of his family. He liked the Army for over five years and tried his best to take care of his obligations to the Army and to his wife and family. He was not aware of a hearing in 1977 probably because any advisement at that time might have been mailed to another address.

3. The applicant provided the following documents:

a. A VA administrative decision letter that indicates the decision of the applicant's discharge which was received on 5 February 1975, covering his period of service, a discharge under conditions other than dishonorable, and is a bar to VA benefits.

b. A copy of the applicant's child's certificate of live birth that shows the child was born on 27 October 1974.

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

a. He enlisted in the Army Reserve on 8 March 1968 and ordered to Active Duty on 7 August 1974. (Letter orders number E-06-82)

b. On 20 January 1975, court-martial charges were preferred on the applicant for being absent without authority from 27 November 1974 to 15 January 1975.

c. On 22 January 1975 the applicant provided a self-authored statement on Fort Leonard Wood (FLW) Form 554 that indicated in effect he never wanted to join the regular Army he joined the National Guard in 1969 so that he may maintain a job and try to support his family.

d. After consulting with legal counsel, he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:

- he was guilty of the charges against him 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 his rights and benefits as a veteran under both Federal and State law

e. On 3 February 1975, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge for the good of the service. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

f. On 5 February 1975, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 2 months, and 24 days of active service with 57 days of lost time. He was assigned separation code KFS with reentry code 4.

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

5. 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. 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 not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the request 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 request and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination.

2. Evidence show the applicant completed 2 months and 24 days of active service with 57 days of lost time. 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 the under other than honorable conditions (UOTHC) discharge to a honorable discharge. Based on this, the Board denied relief.

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states 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. Paragraph 3-7b (General Discharge) states 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. 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.

//NOTHING FOLLOWS//