

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 December 2024

DOCKET NUMBER: AR20240003957

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

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 27 February 1970

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 would like an upgrade of his character of service on his DD Form 214. When he first went into the Army, he was 17 years old and going through depression. He knew what he was doing when he left each time. His family did not want him around. His parents divorced in his early high school years. He was a messed-up kid that did not know which way to turn. He was a kid that did not have any direction in life and no adult to guide him. He would like an upgrade so he can be seen at a Department of Veterans Affairs facility. After being discharged from the military he was in construction for 30 years. He developed degenerative disc disease and went on social security disability.
3. A review of the applicant's service records show:
 - a. He enlisted in the Regular Army on 28 March 1969.
 - b. Court-martial charges were preferred against the applicant on 7 November 1969. His DD Form 458 (Charge Sheet) shows he was charged with:

- one specification of being absent without leave (AWOL) from on or about 30 June 1969 to on or about 1 August 1969
- one specification of being AWOL from on or about 2 August 1969 to on or about 11 August 1969
- one specification of being AWOL from on or about 1 September 1969 to on or about 27 October 1969

c. The applicant underwent a medical examination for the purpose of separation on 12 February 1970. The examining physician noted the applicant was qualified for separation.

d. A DD Form 493 (Extract of Military Records of Previous Convictions), dated 13 February 1970, shows before a special court-martial, the applicant was tried and convicted of one specification of being AWOL from on or about 30 June 1969 to on or about 1 August 1969 and one specification of being AWOL from on or about 1 September 1969 to on or about 27 October 1969. He was sentenced to restriction to the limits of Fort George G. Meade for 30 days and hard labor without confinement for 60 days.

e. Additional court-martial martial charges were preferred against the applicant on 16 February 1970. His DD Form 458 shows he was charged with:

- Charge I, one specification of being AWOL from on or about 20 November 1969 to on or about 6 February 1970
- Charge II, one specification of on or about 20 November 1969, having been duly restricted to the limits of Fort George G. Meade, breaking said restriction

f. On 18 February 1970, after consulting with legal counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial under Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10. The applicant acknowledged that he made the request of his own free will and was not coerced by any person. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to at least one of the charges against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veteran's Administration, he could be deprived of his rights and benefits as a veteran under both Federal and State law and encounter substantial prejudice in civilian life because of an under other than honorable discharge.

g. On 19 February 1970, the immediate commander recommended approval of the applicant's separation under the provisions of AR 635-200, chapter 10, and issuance of an undesirable discharge.

h. A Statement of Medical Condition, dated 27 February 1970, shows the applicant underwent a separation medical examination more than 3 working days prior to his departure from place of separation and to the best of his knowledge, since his last separation examination there had been no change to his medical condition.

i. On 27 February 1970, the separation authority approved the recommended discharge, directed the applicant be reduced to the lowest enlisted grade, and furnished an Undesirable Discharge Certificate (DD Form 258A).

j. The applicant was discharged on 27 February 1970. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, in the rank/grade of private (PV1)/E-1, and his service was characterized as under other than honorable conditions (Separation Program Number 246 and Reenlistment Code 3B). He completed 5 months and 8 days of net service this period. This form also shows in:

- Item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized): National Defense Service Medal
- Item 30 (Remarks): 172 days lost under 10 U.S. Code 972 from 30 June 1969 thru 1 August 1969; 1 September 1969 thru 27 October 1969; 20 November 1969 thru 9 February 1970

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

5. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

6. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

7. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He contends OMH as related to his request. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: Applicant enlisted into the Regular Army on 28 March 1969.

- Court-martial charges were preferred against the applicant on 7 November 1969. His DD Form 458 (Charge Sheet) shows he was charged with:
- one specification of being Absent Without Leave (AWOL) from on or about 30 June 1969 to on or about 1 August 1969
- one specification of being AWOL from on or about 2 August 1969 to on or about 11 August 1969
- one specification of being AWOL from on or about 1 September 1969 to on or about 27 October 1969
- A DD Form 493 (Extract of Military Records of Previous Convictions), dated 13 February 1970, shows before a special court-martial, the applicant was tried and convicted of one specification of being AWOL from on or about 30 June 1969 to on or about 1 August 1969 and one specification of being AWOL from on or about 1 September 1969 to on or about 27 October 1969. He was sentenced to restriction to the limits of Fort George G. Meade for 30 days and "HL" without confinement for 60 days.
- Additional court-martial charges were preferred against the applicant on 16 February 1970. His DD Form 458 shows he was charged with:
- one specification of being AWOL from on or about 20 November 1969 to on or about 6 February 1970
- one specification of on or about 20 November 1969, having been duly restricted to the limits of Fort George G. Meade, breaking said restriction
- On 18 February 1970, after consulting with legal counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial under Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10.
- The applicant was discharged on 27 February 1970. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, in the rank/grade of private (PV1)/E-1, and his service was characterized as under other than honorable conditions. He completed 5 months and 8 days of net service this period.

b. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he would like an upgrade of his character of service on his DD Form 214. When he first went into the Army, he was 17 years old and going through depression. He knew what he was doing when he left each time. His family did not want him around. His parents divorced in his early high school years. He was a messed-up kid that did not know which way to turn. He was a kid that did not have any direction in life and no adult to guide him. He would like an upgrade so he can be seen at a Department of Veterans Affairs facility. After being discharged from the military he was in construction for 30 years. He developed degenerative disc disease and went on social security disability.

c. Due to the period of service, no active-duty electronic medical records were available for review. No hardcopy medical documentation indicating any behavioral health issues during the applicant's time in service was submitted for review. The applicant underwent a medical examination for the purpose of separation on 12 February 1970. The examining physician noted the applicant was qualified for separation.

d. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and no VA electronic medical records were available for review. The applicant did not submit any medical documentation post-military service substantiating his assertion of OMH.

e. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or after his discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for any mental health condition. And while the applicant self-asserted OMH, he did not provide any medical documentation substantiating any BH diagnosis.

h. Per Liberal Consideration guidelines, his assertion of OMH is sufficient to warrant consideration by the Board.

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 the applicant was charged with commission of offenses (AWOL and breaking restriction) punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial. The Board found no error or injustice in his separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. Also, the applicant provided insufficient evidence of post-service achievements in support of a clemency determination. 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 (AR) 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 provided that an individual whose conduct has rendered him triable by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge may submit a request for discharge for the good of the service. The request for discharge may be submitted at any time after court-martial charges are preferred against him. Commanders will ensure that there is no element of coercion in submitting a request for discharge for the good of the service. The member will be given a reasonable time to consult with counsel and to consider the wisdom of submitting such a request for discharge. If he elects to submit the request, the member will personally sign the written request, certifying that he understands that he may receive a discharge under other than honorable conditions and that he understands the adverse nature of such a discharge and the possible consequences thereof. An undesirable discharge certificate was normally furnished to an individual who was discharged for the good of the service. However, the discharge authority may direct an honorable or general discharge, if warranted.

b. An honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability and has been cooperative and conscientious in doing his assigned tasks, he may be furnished an honorable discharge.

c. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. An undesirable discharge is an administrative separation from the service under conditions other than honorable. It may be issued for unfitness or misconduct. An undesirable discharge will be directed only by a commander exercising general court-martial jurisdiction, a general officer in command who has a judge advocate officer on his staff, or by higher authority, based on the approved recommendation of a board of

officers, unless the member waives the board or requests discharge for the good of the Service.

3. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance

does not mandate relief but 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. 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.

6. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//