

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 November 2024

DOCKET NUMBER: AR20240004144

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions discharge
- a personal appearance before the Board

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)

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 in effect, he requests an upgrade because it was 51 years ago, 21 June 1972.
3. A review of the applicant's service records show the following information:
 - a. DD Form 4 (Enlistment/Reenlistment Agreement-Armed Forces of the United States) reflects he enlisted in the Regular Army on 25 March 1970.
 - b. DA Form 20B (Insert sheet to DA Form 20 (Record of Court Martial Conviction) shows the applicant was absent without leave (AWOL) from on or about 9 June 1970 to on or about 11 July 1970 and from on or about 17 July 1970 to on or about 18 December 1970.
 - c. In a Special Court-Martial on 13 January 1971, the applicant was found guilty of AWOL from on or about 9 June 1970 to on or about 11 July 1970 and from on or about 17 July 1970 to on or about 18 December 1970. The court sentenced him to

confinement at hard labor for 4 months, and to forfeit \$50.00 pay per month for 4 months. The sentence was approved on 19 January 1971 and would be duly executed.

d. Special Court Martial Order Number 84, 11 February 1971, shows the unexecuted portion of the applicant's sentence of forfeiture of pay was suspended until 24 March 1971.

e. Special Court Martial Order Number 134, 17 March 1971, shows the unexecuted portion of the applicant's sentence to confinement at hard labor and forfeitures were remitted.

f. DD Form 458 (Charge Sheet) shows court-martial charges were preferred against the applicant on 7 June 1972. His charge sheet shows he was charged with being AWOL from on or about 19 June 1971 until on or about 3 May 1972.

g. On 15 May 1972, the applicant voluntarily requested a discharge under the provision of Army Regulation 635-200 (Personnel Separations-Enlisted Separations), Chapter 10, in lieu of trial by court-martial. The applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of an undesirable discharge; the procedures and rights that were available to him.

(1) 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 Department of Veteran Affairs, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life if discharged under a UOTHC discharge and furnished an Undesirable Discharge Certificate.

(2) He elected not to submit statements in his own behalf.

h. On 8 June 1972, his immediate commander recommended approval of the applicant's voluntary request for discharge with the issuance of an undesirable discharge. The applicant had been AWOL and received a court martial. The chain of command recommended approval with a under other than honorable conditions discharge.

i. The separation authority approved the discharge action on 21 June 1972 under the provisions of Army Regulation 635-200, Chapter 10, and ordered the applicant reduced to the lowest enlisted pay grade and furnished an undesirable discharge.

j. He was discharged on 1 August 1972. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the

service-in lieu of trial by court-martial. His separation program number (SPN) was 246 and reenlistment code 3, 3A and 3B. His service was characterized as under other than honorable conditions. He completed 6 months and 14 days of net active service. He received the following awards: National Defense Service Medal and the Sharpshooter Rifle. He had no foreign service time.

4. On 10 June 1980, the Army Discharge Review Board determined the applicant was properly discharged and denied his request for a change in the type and nature of the applicant's discharge.

5. 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:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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 applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After 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 and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. Also, the applicant provided insufficient evidence of a persuasive nature of post-service achievements or letters of reference 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.

11/18/2024

X

CHAIRPERSON

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) sets forth the basic authority for the separation of enlisted personnel.

a. 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.

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

c. Chapter 10 of the version in effect at the time provided that a member who committed an offense or offenses for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service at any time after court-martial charges were preferred. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses charged, type of discharge normally given under the provisions of this chapter, the loss of Veterans Administration benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. An Undesirable Discharge Certificate would normally be furnished an individual who was discharged for the good of the Service.

3. Army Regulation 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The information entered thereon reflects the conditions as they existed at the time of separation. It states for Block 9e (Character of Service) characterization or description of service is determined by directives authorizing separation. Proper completion of this block is vital since it affects the Soldier's eligibility for post-service benefits. Only six

standard characterizations in this block are authorized: honorable, under honorable conditions (general), under other than honorable conditions, bad conduct, dishonorable and uncharacterized.

4. Army Regulation 635-5 (Personnel Separations-Separation Documents) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPN codes to be entered on the DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge). The SPN 246 (is to be used for RA Soldiers discharged for the good of the service-in lieu of trial by court martial).

5. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD and a corresponding RE Code. The table in effect at the time of his discharge shows a corresponding RE Code of "3B."

6. Army Regulation 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-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

//NOTHING FOLLOWS//