

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2025

DOCKET NUMBER: AR20240004189

APPLICANT REQUESTS: in effect -

- a discharge due to disability
- an honorable characterization of service
- a video appearance before the Board

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

DD Form 149, Application for Correction of Military Record.

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 his request is related to his service during the Vietnam War. He further states, in effect, he injured his ankle during his military service, and it is slowly giving out. He contends he was pending a medical evaluation prior to being discharged.
3. The applicant enlisted in the Regular Army on 17 January 1972. The highest grade he attained was private/E-1. His record is void of foreign service in the Republic of Vietnam.
4. His DA Form 20, Enlisted Qualification Record, shows the applicant was in an absent without leave (AWOL) status on four separate occasions between 6 March 1972 and 12 September 1974 from his Fort Dix, New Jersey Basic Combat Training unit for a total of 695 days.
5. On 29 September 1972, he was charged with two specifications of being AWOL from on or about 10 April 1972 to on or about 2 May 1972; and on or about 8 May 1972 to on

or about 20 September 1972. The applicant was in pre-trial confinement at the time of this action.

6. On 29 September 1972, the applicant underwent a separation physical examination for the purpose of discharge. He reported that he was in fair health. The Standard Form 88, Report of Medical Examination, 29 September 1972, contains the following entry from the examining physician, "Painful right ankle, old compression fracture right os calcis with arthritis. PODIATRY CONSULTATION: USTMC #2, Fort Dix, NJ 10 Oct 1972: Injury to right ankle at age 17, right os calcis."

7. On 17 September 1974, the applicant underwent a second separation physical wherein the applicant reported he was in bad health. The Army physician noted that the applicant had a compression fracture of the right foot with post traumatic arthritis. The applicant was to report to sick call for disposition. The applicant was found qualified for separation.

8. On 18 September 1974, the applicant was charged with two specifications of being AWOL from on or about 9 May 1972 to on or about 20 September 1972; and from on or about 14 April 1973 to on or about 13 September 1974. The applicant was in pretrial confinement at time of this action.

9. On 30 September 1974, the applicant voluntarily requested a discharge for the good of the service, under the provisions of Army Regulation (AR) 635-200, Personnel Separations-Enlisted Personnel, Chapter 10. Prior to making this request the applicant consulted with counsel. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of an under other than honorable characterization (UOTHC) of service, and the procedures and rights that were available to him.

a. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge.

b. He further acknowledged he understood that if his discharge request were 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 Veterans Affairs, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. He elected to submit a statement in his own behalf. In his statement the applicant indicated, in effect, that prior to going AWOL on 8 May 1972 he had a profile for an injury to his leg that occurred during Basic Combat Training. He contends his sergeant made him pick up heavy cabinets and desks which was in violation of his profile. He

further contends he was denied the opportunity to speak to someone other than the sergeant about what was going on; therefore, he went AWOL. He further contends he had no intention of going AWOL from the U.S. Army Personnel Control Facility (PCF) a second time; however, he waited over eight months in an excess leave status waiting for his paperwork to be processed. He contends he returned to the PCF to check on the status of his separation paperwork. The specialist he spoke with had not seen his paperwork and eventually found it in the back of a file cabinet having not been forwarded for processing. He felt like people were playing games with him, so he decided to not report to the PCF anymore.

10. The appropriate separation authority approved the applicant's request for discharge and directed he be separated for the good of the service with an undesirable discharge certificate and reduced to the lowest grade.

11. The applicant was discharged on 22 October 1974 in accordance with AR 635-200, chapter 10. His DD Form 214, Report of Separation from Active Duty, shows he was in a trainee status, and he completed 10 months, and 29 days of net service for the period. His service was characterized as UOTHC, he received a separation code of "KFS, and a reentry code of "3B." He had 695 days lost under Title 10, U.S. Code 972.

12. On 15 December 1980, the Army Discharge Review Board reviewed the applicant's discharge and determined that he was properly discharged.

13. Regulatory guidance, in effect at the time, stated a member who is charged with an offense for which he could be dismissed or given a punitive discharge may not be referred for disability processing. However, if the officer exercising appropriate court-martial jurisdiction dismisses the charge or refers it for trial to a court-martial which cannot adjudge such a sentence, the case may be referred for disability processing. A case file may be referred to the commander exercising general court-martial jurisdiction, if the general court-martial authority finds that (1) the disability is the cause, or substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions, (2) other circumstances warrant disability processing instead of other administrative disposition.

14. Applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

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

16. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR - AHLTA) and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting a discharge upgrade and, in essence, a referral to the Disability Evaluation System (DES). He states the correction should be made:

"Because my ankle now is slowly giving out. That's why they had me pending a medical discharge with 0% payment in OCT 1974."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of Service under consideration shows he entered the regular Army 17 January 1972 and was discharged with an under other than honorable conditions characterization of service on 22 October 1974 under the provisions provided in chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel (6 August 1974): Discharge for the Good of the Service – Conduct Triable by Court Martial. It shows 695 days lost under 10 USC 972.

d. No medical documentation was submitted with the application and his period of service predates the EMR.

e. On his 29 May 1972 pre-entrance Report of Medical Examination, the provider documented an ankle injury which had existed prior to service and was currently asymptomatic:

Painful right ankle, old compression fracture right os calcis [calcaneus] with arthritis.

PODIATRY CONSULTATION:

10 Oct 1972: Injury to right ankle at age 17, right os calcis

EXAM: No acute symptoms

X-RAY: Demonstrates old fracture of right os calcis

DISP: No treatment indicated

f. The applicant was subsequently found qualified for enlistment.

g. A 29 September 1972 Charge Sheet (DD Form 458) shows the applicant was charged with two periods of absence without leave: 10 April 1972 thru 2 May 1972 and 10 May 1972 thru 20 September 1972. A second charge sheet dated 19 September 1974 added a third charge of absence without leave from 14 April 1973 thru 13 September 1974.

h. His pre-separation Report on Medical Examination was completed on 17 September 1974. The provider documented a normal examination, did not list any defects or diagnoses, and determined the applicant was qualified for separation.

i. On 30 September 1974, the applicant voluntarily requested discharge for the good of the service under provisions provided in chapter 10 of AR 635-200. His request was approved by the Commanding General of the U.S. Army Training Center and Fort Dix on 7 October 1974 with the directive he received an undesirable discharge certificate. There is no evidence the applicant had been entered into the DES prior to discharge or that he had a duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

j. Review of his records in JLV shows he is not registered with the VA.

k. It is the opinion of the ARBA medical advisor that neither a discharge upgrade nor a referral of his case to the DES is warranted.

l. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense Guidance for liberal consideration of discharge upgrade requests, the Board found relief was not warranted.

2. The Board carefully considered the applicant's contentions and the reason for his requested upgrade (ankle injury), the record and length of his service, the frequency and nature of his misconduct, the charges preferred against him, his voluntary request for separation and the resulting UOTHC discharge. The Board considered the absence of mitigating factors for the misconduct in the records and the review and conclusions of the Agency medical reviewer. The Board found: (1) the applicant did not have a condition or experience that may excuse or mitigate the discharge; (2) a mitigating condition did not exist nor did a mitigating experience occur during his military service; (3) there is not evidence of a condition or experience that would actually excuse or mitigate the discharge. The applicant did not provide any evidence of post-service achievements or character letters in support of clemency determination. Based on a preponderance of evidence, the Board determined that the applicant's discharge was not in error or unjust and that there was insufficient evidence of a mitigating condition of experience to warrant an upgrade as a matter of liberal consideration.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

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.

X//Signed//

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 (AR) 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, establishes the Army Physical Disability Evaluation System. It states:
 - a. The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of their office, grade, rank, or rating, given due consideration to their availability for worldwide deployment under field conditions.
 - b. An enlisted member may not be referred for physical disability processing when action has been started that may result in his administrative separation with an Under Other than Honorable Conditions characterization of service.
 - c. A case file may be referred to the commander exercising general court-martial jurisdiction, if the general court-martial authority finds that (1) The disability is the cause, or substantial contributing cause, of the misconduct that might result in a discharge

under other than honorable conditions. (2) Other circumstances warrant disability processing instead of other administrative disposition.

3. AR 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 a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of that regulation provides 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 other than honorable conditions is normally considered appropriate.

4. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, 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 grounds.

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, 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.

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.

5. Title 10, U.S. Code, section 1556, 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.

6. AR 15-185, Boards, Commissions, and Committees-ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR will decide cases on the evidence of record. It is not an investigative body. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires. Additionally, applicants may be represented by counsel at their own expense.

//NOTHING FOLLOWS//