

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 November 2024

DOCKET NUMBER: AR20240004261

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter

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 never served in Vietnam because he didn't believe in the war. Going absent without leave (AWOL) was the only recourse he had to protest. Relief is warranted based on President Nixon's pardon for draft dodgers.
3. On 14 May 1970, the applicant was inducted in the Army. Upon completion of training, he was awarded military occupational specialty 11B (Light Weapons Infantryman). The highest grade he attained was E-2.
4. On 8 June 1970, the applicant was reported as AWOL and remained absent until he returned to military authorities on 13 June 1970.
5. Before a summary court-martial on 23 June 1970, at Fort Lewis, WA, the applicant was found guilty of one specification of going AWOL. The court sentenced the applicant to forfeiture of \$80.00 for one month and confinement at hard labor for 30 days. The sentence was approved, but the execution of that portion thereof adjudging confinement at hard labor for 30 days was suspended for 60 days, at which time, unless the suspension was vacated, would be remitted without further action.

6. On 29 November 1970, the applicant was reported AWOL a second time, and remained absent until he returned to military authorities on 18 January 1971.

7. Before a summary court-martial on 8 February 1971, at Fort Lewis, WA, the applicant was found guilty of one specification of going AWOL. The court sentenced the applicant to forfeiture of \$95.00 for one month, confinement at hard labor for 30 days, and reduction to E-1. The sentence was approved on 11 February 1971, but the execution of that portion thereof adjudging confinement at hard labor for 30 days was suspended for 90 days, at which time, unless the suspension was vacated, would be remitted without further action. The service of the sentence to confinement at hard labor for 30 days was deferred on 8 February 1971.

8. On 25 February 1971, the applicant was reported AWOL a third time, and remained absent until he returned to military authorities on 22 March 1971.

9. Before a summary court-martial on 1 July 1971, at Fort Lewis, WA, the applicant was found guilty of one specification of going AWOL. The court sentenced the applicant to forfeiture of \$69.00 for one month, confinement at hard labor for 30 days, and reduction to E-1. The sentence was approved and ordered to be executed.

10. On 3 August 1971, the applicant accepted non-judicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), for failing to go at the time prescribed to his appointed place of duty, on or about 2 August 1971. His punishment included forfeiture of \$50.00 for one month.

11. On 7 September 1971, the applicant was reported AWOL a fourth time, and remained absent until he returned to military authorities on 30 September 1971.

12. Court-martial charges were preferred against the applicant on 7 October 1971, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL.

13. On 12 October 1971, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.

14. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.

15. The applicant was discharged on 27 January 1972. His DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) confirms he was discharged under the provisions of Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), with Separation Program Number 28B (Unfitness, frequent involvement in incidents of a discreditable nature with civil or military authorities). He

was assigned Reenlistment Codes 3 and 3B. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 1 year, 3 months, and 29 days of net active service this period with 135 days of lost time.

16. Presidential Proclamation 4313, issued on 16 September 1974, provided for the issuance of a clemency discharge to certain former Soldiers, who voluntarily entered into and completed an alternate public work program specifically designated for former Soldiers who received a less than honorable discharge for AWOL-related incidents between August 1964 and March 1973.

17. The applicant's record is void and he has not provided any evidence showing he completed an alternate public work program in order to qualify for clemency.

18. 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:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that 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's separation packet is not available for review. However, other evidence shows, following a series of misconduct (multiple AWOLs and courts-martial convictions, and Article 15), the applicant's chain of command presumably initiated separation action against him. The applicant was discharged for unfitness, with an under other than honorable conditions characterization of service. The Board found no error or injustice in his available separation processing. Also, the applicant provided insufficient evidence 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.

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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 635-200 (Personnel Separations – Enlisted Personnel), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. Paragraph 1-9d provided that an honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel, or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 1-9e provided that a general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

3. Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), then in effect, provided the policy and procedures for administrative separation of enlisted personnel for unfitness and unsuitability. It provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay just debts. This regulation also prescribed that an undesirable discharge was normally issued.

4. Presidential Proclamation 4313, issued on 16 September 1974, provided for the issuance of a clemency discharge to certain former Soldiers, who voluntarily entered into and completed an alternate public work program specifically designated for former Soldiers who received a less than honorable discharge for AWOL-related incidents between August 1964 and March 1973. Under this proclamation, eligible deserters were given the opportunity to request discharge for the good of the service with the understanding that they would receive an undesirable discharge. Upon successful completion of the specified alternative service, the deserter was issued a clemency discharge. The clemency discharge did not affect the individual's underlying discharge and

did not entitle him to any VA benefits. Rather, it restored federal and, in most instances, state civil rights which may have been denied due to the less than honorable discharge. If a participant of the program failed to complete the period of alternative service the original undesirable characterization of service would be retained.

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 (BCM/NR) 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.

//NOTHING FOLLOWS//