

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 November 2024

DOCKET NUMBER: AR20240004382

APPLICANT REQUESTS:

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

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)
- DD Form 214 (Report of Transfer or Discharge), for the period ending 24 August 1962
- DD Form 214, for the period ending 1 October 1964

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 enlisted in the Army and was discharged honorably during his first enlistment, then after separating, he re-enlisted and was not given his previous rank or military occupational specialty (MOS), even when he was told he would on re-entry. He was later disciplined for not giving a man a bath, due to his religious views and moral compass. After that, he went home for a few days and the military police showed up at his door and arrested him. He then spent time in the stockade because of that. He knows that going absent without leave (AWOL) was not the right choice; however, he was being threatened by his command to be thrown in for not giving the man a bath anyway. He felt stuck between two wrong choices and he feels as though he should not have been in that situation to begin with. He had a great career leading up to that point with no disciplinary action prior.
3. The applicant enlisted in the Regular Army on 4 September 1959. He held MOS 911.10 (Medical Specialist).

4. He was honorably released on 24 August 1962 and transferred to the U.S. Army Reserve, due to early release overseas returnee. His DD Form 214 shows he completed 2 years, 11 months, and 21 days of active service this period.
5. He again enlisted in the Regular Army on 10 March 1964.
6. He received nonjudicial punishment under the Uniform Code of Military Justice (UCMJ) on 22 July 1964, for on or about 13 July 1964, absenting himself without leave (AWOL) and remaining so absent until on or about 21 July 1964. He was reduced to private (PVT)/E-1.
7. On 19 August 1964, he was referred to Mental Hygiene Consultation Service. The diagnosis was 321- Immature personality reaction manifested by refusal to assume adult responsibility, egocentricity, and lack of insight. The findings show he was and is mentally responsible, able to distinguish right from wrong and adhere to the right and has the mental capacity to understand and participate in board proceedings. He has no disqualifying mental defects sufficient to warrant disposition through medical channels. Recommendation was elimination from the service under the provisions of Army Regulation (AR) 635-208 (Personnel Separations – Discharge – Unfitness).
8. The applicant's record is void of the notification of separation. On 20 August 1964, the applicant stated he had been notified by his commander that he is recommending him for discharge under AR 635-208. The applicant elected to waive counsel, waive his case to be heard by a board of officers, and elected to not submit statements on his behalf. He also elected to add that the fifteen day notice period is waived so the board proceedings may be completed and properly documented to enable the convening authority to make a final disposition of his case as expeditiously as possible.
9. On 21 August 1964, the applicant's chain of command recommended he be eliminated from the service for unfitness under the provisions of AR 635-208, with an Undesirable Discharge Certificate.
10. On 24 August 1964, he underwent a physical examination and was found qualified for separation.
11. On 25 August 1964, a Special Court-Martial convened and found the applicant guilty of having received a lawful command from Lieutenant Colonel M.R.B. his superior officer, to acknowledge receipt of imposition of punishment under Article 15, UCMJ, and to process an appeal within 48 hours, if desired. Also, being AWOL from 31 July 1964 until on or about 6 August 1964. His punishment was to be reduced to the grade of PVT/E-1, to be confined at hard labor for 6 months and to forfeit \$73.00 per month for 6 months.

12. On 8 September 1964, Special Court-Martial Order Number 116, issued by Headquarters, 16th Armor Group, Fort Knox, KY the convening authority, ordered the findings of guilty of charge I and the specification thereunder disapproved. Only so much of the sentence as provides for confinement at hard labor for 3 months and forfeiture of \$73.00 per month for 3 months is approved and will be duly executed.

13. On 16 September 1964, his chain of command recommended he be discharged under the provisions of AR 635-208 with an Undesirable Discharge Certificate.

14. On 23 September 1964, the separation authority, accepted the waiver of a hearing before a board of officers. He directed the applicant be discharged from the Army under the provisions of AR 635-208, paragraph 10, because of unfitness. He directed he will receive an Undesirable Discharge Certificate.

15. Special Court Martial Order Number 124, issued by Headquarters, 16th Armor Group, Fort Knox, KY, on 24 September 1964, shows the unexcused portion of the sentence to confinement at hard labor, was remitted effective the date of his administrative discharge from the service.

16. The applicant was discharged under conditions other than honorable on 1 October 1964, under the provisions of AR 635-208, with a separation processing number of 28B. His DD Form 214 shows he completed 5 months and 16 days of active service this period. He had 37 days of lost time from 13-20 July 1964; 31 July – 5 August 1964; and 8-30 September 1964.

17. By regulation (AR 635-208), individuals will be discharged by reason of unfitness when it is determined they are unfit for further military service despite reasonable attempts to rehabilitate or rehabilitation is impracticable. When discharged because of unfitness, DD Form 258A (Undesirable) will be furnished.

18. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

#### 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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation as unfitness. The Board found no error or injustice in the

separation proceedings under the regulation and subsequent characterization of service assigned at separation. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. 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.

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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 (AR) 635-208 (Personnel Separations – Discharge - Unfitness) then in effect, set forth the basic authority for separation of enlisted personnel for unfitness. The regulation stated that individuals would be discharged by reason of unfitness with an undesirable discharge, unless the particular circumstances in a given case warranted a general or honorable discharge, when it had been determined that an individual's military record was characterized by one or more of the following: (a) frequent incidents of a discreditable nature with civil or military authorities; (b) sexual perversion including but not limited to lewd and lascivious acts, indecent exposure, indecent acts with or assault upon a child, or other indecent acts or offenses; (c) drug addiction or the unauthorized use or possession of habit-forming narcotic drugs or marijuana; (d) an established pattern for shirking; or (e) an established pattern showing dishonorable failure to pay just debts.
3. AR 635-200 (Personnel Separations – General Provisions for Discharge and Release), in effect at the time, stated in:
  - a. Paragraph 9 (Honorable Discharge) – an honorable discharge was a separation from the Army with honor. The issuance of an honorable discharge was conditioned upon proper military behavior and proficient and industrious performance of duty, giving due regard to the rank or grade held and the capabilities of the individual concerned.
  - b. Paragraph 10 (General Discharge) – a general discharge was a separation from the Army under honorable conditions of an individual whose military record was not sufficiently meritorious to warrant an honorable discharge.
4. AR 635-5-1 (Separation Codes), in effect at the time, provided the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the Separation Program Number (SPN) to be entered on the DD Form 214. The regulation stated the SPN 28B was the appropriate code to assign Soldiers separated because of being involved in frequent incidents of a discreditable nature with civil or military authorities.
5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and 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. 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, 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. 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//