

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 January 2025

DOCKET NUMBER: AR20240004718

APPLICANT REQUESTS: upgrade of his undesirable discharge to under honorable conditions (general) or to honorable.

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

- DD Form 293 in lieu of DD Form 149 (Application for Correction of Military Record), 21 March 2024
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 7 June 1972
- letter of support, GML\_\_\_\_, 3 March 2024

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:

a. He joined the Army in 1970 and was sent to Baumholder, Germany. He went to a movie with two other Soldiers and had a few drinks. Later he called a taxi to return to base. A German police officer arrested him for robbing the taxi driver.

b. The other Soldiers had their movie ticket stubs but he lost his. He was falsely accused. His attorney told him he could either spend time in a German prison or go home so he went home. He was never in trouble until that day.

3. The applicant provided copies of:

a. His DD Form 214, dated 7 June 1972.

b. A letter of support from GML\_\_\_\_, dated 3 March 2024, noting he had not used illicit drugs since his discharge from the Army.

4. A review of the applicant's service record reflects:

a. On 29 December 1970, he enlisted in the Regular Army for 2 years.

b. On 1 July 1970, he changed station to U.S. Army Europe, Germany and he was assigned to Service Battery, 7th Battalion, 16th Artillery, Baumholder, Germany.

c. A DA Form 2800 (Criminal Investigative Division (CID) Report of Investigation), Report Number 71-CIDxxx-xxxxx, dated 3 January 1972, summarizes a first progress report from the CID, Baumholder Field Office, with five attachments consisting of statements to German police provided from German national witnesses. The report reflects a German National taxi driver reported a robbery which occurred at approximately 2200 hours on 31 December 1972. The driver, FAK\_\_\_\_, had been contracted by three men at 2045 hours on 31 December 1971 to drive them from Bad Kreuznach, Germany to Idar-Oberstein, Germany. At approximately 2220 hours at Heuweg, Idar-Oberstein, Germany, the three men, believed to be members of the U.S. Forces, forced taxi driver FAK\_\_\_\_ to stop his vehicle by holding knives at his neck and chest. The men forced FAK\_\_\_\_ out of the vehicle, tied his hands and feet, and then stole his wallet containing DM 60.00, and fled in his vehicle. The vehicle was found about 400 meters from the area with the driver's wallet, missing the money. Five statements from German nationals who were witness to this robbery, or who were connected as observers after the fact, reflect:

(1) A statement from German national taxi driver FAK\_\_\_\_, given the night of the incident; describes the incident in which he was stopped at about 2045 hours on 31 December 1971 by three males who he described as American nationals. They requested to be taken to Idar-Oberstein for an agreed fare of \$20.00. They were looking for a house there. At some point one passenger behind him placed his hands around his neck and another next to him pulled a knife on him. The front passenger pulled a knife. One passenger behind him said in English, "keep quiet and to go wherever we want, and nothing would happen to you." The man in the right rear also had a knife in his hand. They instructed him to turn into a wooded area and then at knife point, forced him out of his vehicle, and told him to lay face first on the ground, where they tied him up with a yellow cord they had with them. Another went through his pockets and took his wallet and some money valued about DM60.00. The three men got into his car and departed. The passenger in the front seat left his eyeglasses behind. FAK\_\_\_\_ provided a description of the front seat passenger but could not identify the two men in the back seat.

(2) A statement from German national taxi driver WF\_\_\_\_, dated 3 January 1972, in which he states he was instructed go travel to a movie theater on 31 December 1971, and once there he picked up three U.S. Soldiers dressed in civilian clothes. He was subsequently shown three photos and identified them as the three males he was

confronted with at the CID office on New Year's Eve. He did not remember if they were the same three males he drove from Baumholder to Idar-Oberstein at 2015 hours on 31 December 1971.

(3) A statement from German national taxi driver ES\_\_\_\_, dated 4 January 1972, reflects the applicant was the subject of police line-up and he was identified by taxi driver ES\_\_\_\_. The taxi driver's transcribed statement, dated 4 January 1972 details his interaction with the applicant, in effect, the taxi driver was parked at the Bad Kreuznach train station when the applicant entered his vehicle on the front passenger side and requested a ride to Baumholder. He and the applicant went nearby into the taxi stand dispatch office to prepay the fare, but the individual did not have enough money to pay for the fare, so the driver refused to transport him. The applicant walked away. A few minutes later the applicant reentered the same taxi when the taxi driver attempted to respond to a radio call for a different passenger. They recognized each other right away. He drove the applicant to the train station anyway because the light turned green and then he let him out. The taxi driver maintained the applicant was not accompanied by any other person.

(4) A statement from German national taxi driver OW\_\_\_\_, dated 4 January 1972, shows the applicant was the subject of a police line-up and identified by taxi driver OK\_\_\_\_. Between 2000 and 2100 hours on 31 December 1971, when he arrived at the taxi stand by the train station, there were no other taxi drivers present. Three males were standing in the vicinity of the taxi stand. One went to him and asked about the price of a trip to Kusel. The applicant was the male he identified in the line-up. He learned of the robbery of another taxi driver the next day.

(5) A statement from German national taxi dispatcher HL\_\_\_\_, dated 4 January 1972, who identified the applicant as the individual who interacted with taxi driver ES\_\_\_\_ and accompanied him into the dispatch office on 31 December 1971, but did not have enough money to pay a fare to Baumholder. This statement reports that HL\_\_\_\_ identified the applicant among others in a police line-up as the individual attempting to hail a taxi to Baumholder.

d. A DA Form 2800, Report Number 71-CIDxxx-xxxxx, dated 2 February 1972, reflecting a second progress report was completed which identified the applicant as being one of the assailants involved in the taxi robbery on 31 December 1971.

e. On 7 February 1972, the Commanding Officer, Service Battery, 7th Battalion, forwarded the CID Report of Investigation along with the statements of the five German nationals to the commanding officer of 7th Battalion.

f. On the same date, court-martial charges were preferred against the applicant. A DD Form 458 reflects that he was charged with violation of Article 122 of the Uniform

Code of Military Justice (UCMJ) in that he did, at Idar-Oberstein, Germany, on or about 2115 hours on 31 December 1971, by means of force and putting him in fear, steal from FAK\_\_\_ against his will, approximately DM 60.00.

g. On 16 February the Commanding Officer, 7th Battalion, recommended trial by special court-martial, empowered to adjudge a bad conduct discharge.

h. On 15 March 1972, the Commanding Officer, 16th Field Artillery recommended trial by special court-martial.

i. After consulting with legal counsel on 26 April 1972, he voluntarily requested discharge for the good of the service in lieu of trial by court-martial, under the provisions of Chapter 10, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel). In doing so, he acknowledged that the charges preferred against him under the UCMJ, authorized the imposition of a bad conduct discharge or dishonorable discharge. He further acknowledged:

- he had not been subjected to coercion with respect to his request for discharge
- he had been advised of the implications that were attached to it
- by submitting the request, he was acknowledging he was guilty of the charge(s) against him or of (a) lesser included offense(s) therein contained which also authorized imposition of a bad conduct or dishonorable discharge
- he could be discharged under other than honorable conditions, furnished an undesirable certificate, and he could be ineligible for many or all benefits administered by the Department of Veterans Affairs (VA)
- he could be deprived of many or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he could expect to encounter substantial prejudice in civilian life by reason of an under other than honorable conditions discharge
- he was advised he could submit any statements he desired in his own behalf, and elected not to do so

j. His immediate commander's recommendation for approval of his request for separation under provisions of Chapter 10 of Army Regulation 635-200 is not in the available record.

k. On 5 May 1971, he underwent a medical examination and gave a report of medical history in connection with his discharge. He reported he was in good health and the examining physician indicated he was qualified for separation.

l. An undated Report of Mental Status Evaluation, shows he underwent a mental status evaluation in connection with his chapter separation. The Chief Medical Officer,

Army Health Clinic, Baumholder, Germany, noted his behavior was normal, he had a full level of alertness, he had a fully oriented level or orientation with level mood, he had clear thinking process and he had normal thought content with good memory. The findings of the report state he:

- had no significant mental illness
- was mentally responsible
- was able to distinguish right from wrong and was able to adhere to the right
- had the mental capacity to understand and participate in board proceedings
- met the retention standard prescribed in Chapter 3, Army Regulation 40-501 (Standards of Medical Fitness)

m. On 23 May 1972, the separation authority approved his discharge for the good of the service, with separation program number 246 (Discharge for the Good of the Service), and directed he be furnished an Undesirable Discharge Certificate.

n. On 17 June 1972, he was discharged. His DD Form 214 shows he was discharged under provisions of Chapter 10, Army Regulation 635-200, with separation program number 246, and reenlistment code 4. His service was characterized as under other than honorable conditions. He completed 1 year, 5 months, and 9 days of net active service during this period with no time lost. His DD Form 214 further shows his rank/pay grade as private/E-1 and he was awarded the National Defense Service Medal and Marksman Marksmanship Qualification Badge with Rifle Bar (M-16).

o. There is no evidence he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

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

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the criminal nature of the misconduct leading to the applicant's separation and the lack of mitigation or clemency evidence, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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) in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

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 provided that a member who had committed an offense or offenses for which, under the UCMJ and the Manual for Court Martial, 1969 (Revised Edition), the authorized sentence included a punitive discharge, could submit a request for discharge for the good of the service for conduct triable by court-martial. The request could be submitted at any time after charges were preferred. Although an honorable or general discharge could be directed, an Undesirable Discharge Certificate would normally be furnished to an individual who was discharged for the good of the service.

(1) A medical examination is not required but may be requested by the member under Army Regulation 40-501 (Medical Services – Standards of Medical Fitness), chapter 10. A member that requests a medical examination must also have a mental status evaluation before discharge.

(2) Commanders will insure that a member will not be coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. Consulting counsel will advise the member concerning:

- the elements of the offense or offenses charged

- burden of proof
- possible defenses
- possible punishments
- provisions of Chapter 10
- requirements of voluntariness
- type of discharge normally given under provisions of Chapter 10
- rights regarding the withdrawal of the member's request
- loss of Veterans Administration benefits
- prejudice in civilian life because of the characterization of the discharge

(3) The separation authority will be a commander exercising general court-martial jurisdiction or higher authority. However, authority to approve discharges in cases in which a member has been AWOL for more than 30 days and has been dropped from the rolls of his or her unit as absent in desertion, and has been returned to military control, may be delegated to the commander exercising special court-martial convening authority over the member.

3. Army Regulation 635-5 (Separation Documents), then in effect, prescribed the separation documents that would be furnished each individual who was separated from the Army, including Active Duty Training (ACDUTRA) personnel, and established standardized procedures for the preparation and distribution of these documents.

a. A DD Form 214 will be issued at the time of separation to each member of the Regular Army and to each member of the Reserve Components, and the Army of the United States without component, call or ordered to active duty for ACDUTRA for a period of 90 days or more.

b. Appendix A. Separation Program Number and Authority Governing Separation. The separation program designator "246" corresponded to "For the Good of the Service" and the authority, Army Regulation 635-200, chapter 10.

//NOTHING FOLLOWS//