

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 November 2024

DOCKET NUMBER: AR20240004723

APPLICANT REQUESTS:

- an upgrade of his characterization of service from under other than honorable conditions to general, under honorable conditions
- a personal appearance before the Board by video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Separation from Active Duty), dated 7 March 1977

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 at the time of his enlistment the recruiter lied to him on every level. He was young and naïve, and believed what he was told and found out later it was all lies. When he was at Fort Hood, TX he was having family problems and went to the commanding officer and was basically laughed at. He felt he had no other options but to leave. He knew the consequences but was desperate. There is a lot more to his story, but it is too long to cover here. The fact that he has this discharge has haunted him for over 45 years. He is not looking for any benefits, just consideration of an upgrade of his discharge.

3. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 4 September 1975. The highest rank/grade he held was private (PV2)/E-2.

b. On 8 October 1975, he accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for on or about

2 October 1975, willfully disobeying a lawful order from captain D_. His punishment included forfeiture of \$80.00 for one month.

c. His duty status changed on the following dates:

- Present for Duty (PDY) to Absent without Leave (AWOL) – 2 August 1976
- AWOL to PDY – 11 August 1976

d. On 23 August 1976, he accepted NJP under the provisions of Article 15, UCMJ for being AWOL from on or about 2 August 1976 to on or about 10 August 1976. His punishment included reduction to private (PV1)/E-1 (suspended for 30 days), forfeiture of 7 days of pay (\$84.00 per month for one month) suspended for 30 days, and 7 days of extra duty.

e. His duty status changed on the following dates:

- PDY to AWOL – 16 October 1976
- AWOL to Dropped from the Rolls (DFR) – 15 November 1976
- DFR to Returned to Military Control – 16 February 1977

f. A personnel control facility interview sheet dated 16 February 1977, which shows the applicant checked yes to the statement, "I want to be separated from the Army as soon as possible".

g. The applicant underwent a medical examination on 17 February 1977 for the purpose of separation. The examining physician noted the applicant was qualified for separation.

h. Court-martial charges were preferred against the applicant on 18 February 1977. His DD Form 458 (Charge Sheet) shows he was charged with one specification of being AWOL from on or about 16 October 1976 to on or about 16 February 1977.

i. On 22 February 1977, after consulting with legal counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial under Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. The applicant acknowledged he made the request of his own free will and was not coerced by any person. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to at least one of the charges against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. 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 Veteran's Administration, he could be deprived of his rights and benefits as a veteran under both

Federal and State law and encounter substantial prejudice in civilian life because of an under other than honorable discharge.

j. On 24 February 1977, the immediate commander recommended approval and recommended an under other than honorable conditions discharge. The intermediate commander echoed this recommendation.

k. The separation authority approved the recommended discharge on 28 February 1977, directed the applicant be reduced to the lowest enlisted grade, and be issued an under other than honorable conditions discharge.

l. The applicant was discharged on 7 March 1977. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, in the rank/grade of private (PV1)/E-1, and his service was characterized as under other than honorable conditions. He completed 1 year, 1 month, and 24 days of net active service during the covered period and had lost time from 2 August 1976 to 9 August 1976 and from 16 October 1976 to 15 February 1977 (131 days). He was assigned a separation code of JFS and reenlistment code of RE-4. The applicant was awarded or authorized the Sharpshooter Marksmanship Qualification Badge (M16).

4. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge processing within that board's 15-year statute of limitations.

5. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

6. The Board should consider the applicant's new argument and his overall record in accordance with the published equity, injustice, or clemency determination 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.

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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 forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a member who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, regardless of whether the charges are referred to a court-martial and regardless of the type of court-martial to which the charges may be referred. The request for discharge may be submitted at any stage in the processing of the charges until final action on the case by the court-martial convening authority. Commanders will ensure that a member is not coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the member may elect to submit a request for discharge for the good of the service. The member will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a member who is discharged for the good of the service. However, the discharge authority may direct an honorable or general discharge if such are merited by the member's overall record during the current enlistment.

b. An honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable condition is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and for the good of the service.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 10 for conduct triable by court-martial would receive a separation code of "JFS."

4. AR 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 code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

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 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

6. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

//NOTHING FOLLOWS//