

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 January 2025

DOCKET NUMBER: AR20240004801

APPLICANT REQUESTS: correction of his service record to remove all derogatory information pertaining to his absent without leave (AWOL) or desertion status and reconsideration of his previous request for an upgrade of his character of service.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20130020312 on 7 August 2014.
2. The applicant states he is seeking removal of any markings of desertion. He also asks a change in AWOL and desertion status. He is trying to receive benefits from the Veterans Administration and his character of service is a bar to benefits.
3. A review of his service record shows:
 - a. He enlisted in the Regular Army on 19 January 1971.
 - b. He accepted nonjudicial punishment on 20 April 1971 for absence without authority from the U.S. Army Missile and Munitions Center and School, Redstone Arsenal, Alabama. His punishment included forfeiture of \$30.00 per month for one month and extra duty for a period of 14 days to be performed 2 hours per day.
 - c. He accepted nonjudicial punishment on 12 September 1972, for possession of and using fireworks. His punishment included forfeiture of \$80.00 for one month.
 - d. He accepted nonjudicial punishment on 2 November 1972, for failure to be at his prescribed place of duty at the prescribed time. His punishment included forfeiture of \$46.00 per month for one month and reduction to the grade of PFC (E-3) suspended for 30 days.

e. On 4 October 1973, court-martial charges were preferred on the applicant for four specifications of being absent without authority, as follows:

- 7 May 1973 to 6 June 1973
- 14 June 1973 to 8 July 1973
- 31 July 1973 to 11 September 1973
- 20 September 1973 to 23 September 1973

f. On 23 September 1973, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life

g. On 11 October 1973, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge for the good of the service. He would be issued an undesirable discharge and reduced to the lowest enlisted pay grade.

h. On 31 October 1973, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Report of Separation from Active Duty) shows he completed 2 years, 6 months, and 6 days of active service with 99 days of lost time.

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

5. By regulation (AR 27-10), removal of records of non-judicial punishment from military personnel files must demonstrate error or injustice to a degree justifying removal.

6. By regulation (AR 635-8), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.
7. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.
8. 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:

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. The applicant was charged with being absent without leave from 7 May 1973 to 6 June 1973, 14 June 1973 to 8 July 1973, 31 July 1973 to 11 September 1973, and from 20 September 1973 to 23 September 1973, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's length of absence found insufficient evidence to warrant a discharge upgrade. Based on a preponderance of the evidence, the Board concluded that the characterization 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.

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. Army Regulation 27-10 (Military Justice,) paragraph 3-43, Table 3-2, rule 3, states the removal of records of non-judicial punishment from military personnel files must demonstrate error or injustice to a degree justifying removal.
2. Army Regulation 635-8 (Separations Processing and Documents), states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.
3. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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. Paragraph 3-7b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.
4. 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/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.
 - 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 based on 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.

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.

//NOTHING FOLLOWS//