

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 January 2024

DOCKET NUMBER: AR20240004919

APPLICANT REQUESTS:

- an upgrade of his undesirable characterization of service to under honorable conditions (General)
- 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)
- Applicant Statement
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), for the period ending 6 August 1962

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. While on a pass he found out his mother was ill. Being young and not thinking, he went home. He stayed until his mother was feeling better. He went back and turned himself in. The first sergeant (1SG) asked him "What are you doing back here?" and the applicant told him that he was turning himself in for a court martial. The 1SG told the applicant that he did not want him there. The applicant cleaned the floor every night for two or three weeks. Every morning the 1SG would tell the applicant he did not want him there and that there were four exits, use either one. The applicant went home.

b. The applicant was taken to Fort Devens, MA. He told his story to his lawyer who was a major in the Judge Advocate General Corps, and the lawyer said it could be overturned. His next lawyer was a lieutenant who told him the charges were going to be dropped way down due to his specific circumstances. The applicant felt the Army had

lied to him and him being young and foolish, he told everyone that all he wanted was to get out and go home. The applicant states he is getting up in years now and he does not want to pass away with an undesirable discharge.

3. The applicant's complete military service record is not available for review. However, there are sufficient documents for the Board to conduct a fair and impartial review of this case.

4. The applicant enlisted in the Regular Army on 4 August 1960, for a period of three years.

5. The applicant was discharged on 6 August 1962. His DD Form 214 shows he was discharged under the provisions of Army Regulation (AR) 635-208 (Personnel Separations – Discharge Unfitness), and his service was characterized as undesirable. He was issued a DD Form 258A (Undesirable Discharge Certificate). He completed 1 year and 29 days of active service. His DD Form 214 shows in:

- Item 11c (Reason and Authority): AR 635-208, SPN 28B (Involved in frequent incidents of a discreditable nature with civil or military authorities)
- Item 26 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized): Parachutist Badge
- Item 32 (Remarks): 338 total days lost under 10 USC 972
  - 7 August 1961 – 16 November 1961
  - 22 November 1961 – 13 December 1961
  - 14 December 1961 – 9 April 1962
  - 1 May 1962 – 4 June 1962
  - 5 June 1962 – 5 August 1962

6. 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.

7. 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. The applicant was separated for 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.

5/5/2025

X

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. 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), in effect at the time, established policy and provided procedures and guidance for the prompt elimination of enlisted personnel who were determined to be unfit for further military service. It states:

a. Action will be taken under this regulation only when it is clearly established that:

(1) Despite reasonable attempts to rehabilitate or develop the individual as a satisfactory Soldier, further effort is unlikely to succeed.

(2) Rehabilitation is impracticable, as in cases of confirmed drug addiction, or when the medical and/or personal history record indicate that the individual is not amenable to rehabilitation measures.

(3) Disposition under other regulations is inappropriate.

b. Individuals will be discharged by reason of unfitness with an undesirable discharge, unless the particular circumstances in a given case warrant a general or honorable discharge, when it has been determined that an individual's military record is characterized by one or more of the following:

- Frequent incidents of a discreditable nature with civil or military authorities.
- Sexual perversion
- Drug addiction or the unauthorized use or possession of habit-forming narcotic drugs or marijuana
- An established pattern of shirking
- An established pattern showing dishonorable failure to pay just debts

3. AR 635-5 (Personnel Separation – Separation Documents), in effect at the time, provided that Soldiers separated under the provisions of AR 635-208 for unfitness would receive an SPN of "28B" for being involved in frequent incidents of a discreditable nature with civil or military authorities.

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 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.

5. 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//