

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 January 2025

DOCKET NUMBER: AR20240004926

APPLICANT REQUESTS: upgrade of his under conditions other than honorable discharge.

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

DD Form 149 (Application for Correction of Military Record)

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 would like to be acknowledged for the two years he spent in service and to be buried at death with a flag on his grave. He never thought it was possible for upgrade until now.
3. The applicant enlisted in the Regular Army on 30 June 1972.
4. He received non-judicial punishment under article 15 of the Uniform Code of Military Justice on 5 October 1973, for being absent without leave (AWOL) from on or about 0600 hours, 24 September 1973 until on or about 2300 hours, 24 September 1973. Also being AWOL from on or about 1300 hours, 25 September 1973 until on or about 1200 hours, 28 September 1973.
5. His DA Form 2-1 (Personnel Qualification Record) item 21 (Time Lost) shows he was AWOL from 16 April 1974 until 21 April 1974. He went AWOL again on 5 June 1974. Item 35 (Record of Assignments) shows he was dropped from the rolls (DFR) on 5 July 1974.

6. DA Form 4187 (Personnel Action) shows his duty status was changed from DFR to returned to military control on 13 July 1977, after he was apprehended in Williamsport, PA.

7. He underwent a separation physical examination on 21 July 1977 and was found qualified for separation.

8. DD Form 458 (Charge Sheet) shows court-martial charges were preferred on 25 July 1977, for being AWOL from 16 April 1974 – 21 April 1974 and 5 June 1974 – 13 July 1977.

9. On 27 July 1977, the applicant voluntarily requested discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. He understood that he may request discharge for the good of the service because charges have been preferred against him under the UCMJ, which authorizes the imposition of a bad conduct or dishonorable discharge. He was afforded the opportunity to consult with counsel. He understood he may be discharged under other than honorable conditions. He also understood:

- He will be deprived of many or all Army benefits
- He may be ineligible for many or all benefits administered by the Veteran's Administration and that 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 because of discharge under other than honorable conditions

10. His chain of command recommended approval and that an Other Than Honorable Discharge Certificate be issued.

11. On 13 September 1977, the separation authority approved discharge under the provisions of AR 635-200, chapter 10 and directed a Discharge Certificate Under Other Than Honorable Conditions be issued. He also directed that he be reduced to the lowest grade.

12. Accordingly, he was discharged on 27 September 1977 under conditions other than honorable under the provisions of AR 635-200, chapter 10. His DD Form 214 (Report of Separation from Active Duty) shows he completed 2 years, 1 month, and 21 days net active service this period. He had 1,133 days lost under 10 USC 972 from 25 September 1973 – 28 September 1973; 16 April 1974 – 21 April 1974; and 5 June 1974 – 12 July 1977.

13. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within the Board's 15-year statute of limitations.

14. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

15. 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 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, military record, and regulatory guidance were carefully considered. Based upon the 1,133 days of AWOL leading to the applicant's separation and the lack of any sufficient evidence to mitigate such misconduct, 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.

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) 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.
 - a. Paragraph 3-7a (1) 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) 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. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

3. 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//