

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2025

DOCKET NUMBER: AR20240005097

APPLICANT REQUESTS: an upgrade of his characterization of service from under conditions other than honorable to under honorable conditions (general).

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

- DD Form 149 (Application for Correction of Military Record), 24 April 2024
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 24 April 2024
- self-authored statement
- Medical Documentation
- Direct and Cross Examination document
- Request for Clemency, 19 April 1969
- DA Form 2627-1 (Record of Proceedings under Article 15, Uniform Code of Military Justice), 23 August 1969
- Special Court-Martial Order Number 1295, 7 May 1969
- Notification of Separation, 3 April 1970
- Election of Rights, 3 April 1970
- Immediate Commander's Recommendation for Separation, 8 April 1970
- Intermediate Commander's Recommendation for Separation, 8 April 1970
- Separation Authority Approval Memorandum, 16 April 1970
- Order of Ejection, 24 April 1970
- Undesirable Discharge Certificate, 24 April 1970
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 24 April 1970
- Identification cards
- certificate of award, 1 February 2012
- verification of benefits letter, 16 August 2023

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, in effect, he tried to enlist in 1964 when he turned 18; however, due to a heart murmur he was told he could not serve and was classified as a 1Y. In 1968 he was drafted and classified as 1A, and he was inducted into the Army.

a. While going through basic combat training he experienced severe back pain. This pain disrupted his training, he sought medical attention and was placed on a permanent medical profile and wore a back brace. After completion of basic training, he went on leave and during this leave time he encountered another back issue and received medical attention. After his medical treatment, he made a harsh decision and went absent without leave (AWOL). He knows he was young and foolish and has paid the consequences.

b. After his discharge, he worked various jobs, divorced, and moved to Miami where he worked in various positions within a union, while still experiencing back issues. He has worked his whole life, supported his family, and retired with a pension. He knew he had to work hard after his discharge and believes he made the best to accomplish good things.

c. He is requesting an upgrade of his discharge in hopes to receive at the least an under honorable conditions (general) discharge, since he was placed on a permanent medical profile. He was a Soldier who followed directions, was neat and clean, and the discharge upgrade would allow him to qualify for benefits.

3. The applicant was inducted into the Army of the United States on 8 July 1968. He was in a trainee status. The highest rank he attained was private/E-1.

4. The applicant received nonjudicial punishment (NJP), under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 23 August 1968, for disobeying a lawful order from his superior officer on or about 21 August 1968. His punishment imposed was forfeiture of \$12.00, restriction for 14 days, and extra duty for 14 days.

5. Court-martial charges were preferred against the applicant for violations of the UCMJ. The relevant DA Form 458 (Charge Sheet) is not present in the applicant's official military personnel record.

6. Before a special court-martial, the applicant was found guilty of going AWOL on or about 24 October 1968 and remaining AWOL until on or about 9 March 1969. He was sentenced to confinement at hard labor for five months and forfeiture of \$46.00 per month for five months. The sentence was adjudged on 18 April 1969. The sentence was approved and ordered to be duly executed on 7 May 1969.

7. On 28 July 1969, the applicant's immediate commander notified him of the intent to recommend him for separation under the provisions of Army Regulation (AR) 635-212 (Personnel Separations - Discharge - Unfitness and Unsuitability), Chapter 13, based on unfitness.
8. On 31 July 1969, the applicant consulted with counsel and was advised of the basis for the contemplated action to separate him and of the rights available to him. He waived consideration, a personal appearance, and representing counsel by an administrative separation board and understood he may encounter prejudice in civilian life. Additionally, he elected to not submit a statement in his behalf.
9. On 15 August 1969, the applicant's immediate commander formally recommended him for separation under the provisions of AR 635-212, for unfitness. The immediate commander noted the reason for the recommended action was that the applicant went AWOL one time from various units of assignment and was subsequently dropped from rolls as a deserter. The applicant received one special court martial and Article 15, he received no delinquency reports from the post stockade, he accumulated 133 days bad time and was considered unfit for military service.
10. The applicant was reported as AWOL effective 7 October 1969 and dropped from rolls effective 6 November 1969. His AWOL time ended on 1 February 1970.
11. On 30 March 1970, the applicant was referred by his unit for consideration of administrative discharge. He was psychiatrically examined on 27 March 1970, at the stockade, and cleared for any action deemed appropriate by the command.
12. On 3 April 1970, the applicant's immediate commander notified him of the intent to recommend him for separation under the provisions of AR 635-212 for unfitness.
13. On the same date, the applicant consulted with counsel and was advised of the basis for the contemplated action to separate him and of the rights available to him. He waived consideration, a personal appearance, and representing counsel by an administrative separation board and understood he may encounter prejudice in civilian life. Additionally, he elected to not submit a statement in his behalf.
14. On 8 April 1970, the applicant's immediate commander formally recommended him for separation under the provisions of AR 635-212, by reason of unfitness.
15. On 9 April 1970, the applicant's intermediate commander recommended approval of the recommended separation.

16. The separation authority approved the recommended discharge for unfitness on 16 April 1970 and directed the issuance of an DD Form 258A (Undesirable Discharge Certificate).

17. The applicant was discharged on 24 April 1970, under the provisions of AR 635-212, in the grade of E-1. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows his service was characterized as under conditions other than honorable. He was credited with 5 months and 4 days of total active service with 501 days lost time.

18. The applicant additionally provides:

a. Medical documentation, to include documentation showing his physical capacity or stamina, upper extremities, lower extremities, hearing and ear, eyes, and psychiatric (PULHES), his medication condition physical profile record dated 7 October 1968 illegible, multiple health records showing he was experiencing back pain and on profile, and a referral to an orthopedic clinic.

b. Direct Examination documentation, referencing the applicant's back pain in his personal statement and his permanent profile, stating it was both a physical problem and financial problem which caused him to go AWOL. His request for clemency documentation, dated 19 April 1969, showing he was convicted of being AWOL and he was requesting clemency.

c. Multiple forms of identification including his membership card for the International Brotherhood of Painters and Allied Trades, a certificate of award for his retirement from employment after meeting the required number of years and qualifications established by the Pension Plan, and his verification of benefits for his pension plan.

19. AR 635-212 states that an individual is subject to separation when it is clearly established that despite attempts to rehabilitate or develop him as a satisfactory Soldier further effort is unlikely to succeed.

20. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

21. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the

Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions 20 April 1970 discharge. He states in his self-authored letter he had severe back pain which started during basic training for which he was given a back brace and placed on a permanent profile. After several days of treatment at the West Point Hospital, "I made a bad and harsh decision and went AWOL [absent without leave]." He went on to perform multiple jobs after he was discharged.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of Service under consideration shows he entered the regular Army on 8 July 1968 and received an under other than honorable conditions discharge on 20 April 1970 under the provisions provided in AR 635-212, Discharge – Unfitness and Unsuitability (21 January 1970). The separation program number 28B denotes the reason for separation as "Unfitness, frequent involvement in incidents of a discreditable nature with civil or military authorities."

d. A 7 May 1969 Special Court Martial Order shows the applicant pled to and was found guilty of being AWOL from 24 October 1968 thru 9 March 1969.

e. A 23 May 1969 orthopedic evaluation states the applicant had "several year history of low back pain." Given his 8 July 1968 entrance into the Army, this condition existed prior to service (EPTS).

f. The applicant had been drafted into the Army, and with the need for Soldiers during the Vietnam war, it appears the decision was made to retain him rather than separate him for this preexisting condition: On 7 October 1969, the applicant was placed on a duty limiting physical profile. It states he was medically qualified for duty with permanent limitations.

g. His pre-separation psychiatric evaluation was completed by a psychiatrist on 27 March 1970. The psychiatrist cleared the applicant for separation:

"DIAGNOSIS : Passive-aggressive personality, chronic, minimal; manifested by AWOLs, stubbornness, rationalizations, poor motivation for duty. Stress: Moderate.

Routine duty plus wife's illness, Impairment for further military duty: Moderate. LOD: No, EPTS

In connection with standards prescribed in AR 40-501 [Standards of Medical Fitness], there are no mental or physical defects warranting admission to, or final disposition through, medical channels.

RECOMMENDATIONS/COMMENTS: This individual is psychiatrically cleared for any action deemed appropriate by command."

h. On 3 April 1970, his company commander recommended the applicant be separated for unfitness under paragraph 6a of AR 635-212. The commanding general of the U.S. Army Training Center, Infantry and Fort Dix approved his separation with an undesirable discharge certificate 16 April 1970.

i. The applicant has no records in JLV.

j. There is no evidence the applicant had a mental health or other medical condition which would have then contributed to or would now mitigate his multiple UCMJ violations.

k. It is the opinion of the ARBA medical advisor that a discharge upgrade based upon a medical condition is not warranted.

l. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense guidance for consideration of discharge upgrade requests, the Board found relief was not warranted.

2. The Board carefully considered the applicant's contentions, his record of service, the frequency and nature of his misconduct, the special court-martial results and the reason for his separation UOTHC. The Board considered his statement regarding back, the annotation on his entrance physical, his duty limiting profile, his separation physical results and the review and conclusions of the Agency medical advisor. The Board found: (1) the applicant did not have a condition or experience that may excuse or mitigate the discharge; (2) the applicant did not have a mitigating condition that existed or an experience that occurred during military service; (3) there is insufficient evidence of a condition or experience that excuses or mitigates the discharge. The applicant did not provide evidence to support his statement regarding his post-service achievements or character. Based on a preponderance of evidence, the Board determined that the applicant's reason for separation and character of service was not in error or unjust and that a correction of his discharge was not warranted as a matter of liberal consideration or clemency.

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. 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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.
 - a. An honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally met the standards of acceptable conduct and

performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

4. Army Regulation 635-212 (Personnel Separations - Discharge - Unfitness and Unsuitability), then in effect, provided the policy and procedures for administrative separation of enlisted personnel for unfitness and unsuitability. It provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay just debts. This regulation also prescribed that an undesirable discharge was normally issued.

5. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs 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.

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 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.

//NOTHING FOLLOWS//