

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 January 2025

DOCKET NUMBER: AR20240005746

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

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Applicant's Statement

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. He was proud to be a Soldier, but under unforeseen circumstances his military career was cut short. He was not offered a military lawyer to advise him of his rights, and the company commander told him to take the discharge or go to Leavenworth for 10 years. He would like to spend the rest of his life identifying as a veteran.

b. In 1974, he enlisted in the Army directly after high school. It was his plan to have a long and successful career in the military. His basic training and advanced individual training were at Fort Polk, LA. He was so proud to wear his uniform. Next, he was stationed at Fort Carson, CO. His military occupational specialty was 11B (Light Weapons Infantryman) and he was doing great. Once he was assigned to his unit, he sent for his wife, and they rented a place off base to live. His platoon sergeant would stop by their house for a beer and visit when he was home. Then, while the applicant was on maneuvers, in the field, his platoon sergeant stopped by and raped his wife. The applicant tried to report it, but the Army told him to shut up and go away. So, he broke

the law and went after him himself. The civilian authorities arrested the applicant, and he spent the next 60 days in jail.

c. Once the applicant returned to his unit, his sergeant had been transferred to another base. The applicant was given a choice to face a court martial with 10 years in prison or accept a discharge and end his career in the Army. He took the discharge, and he is sorry for what happened. He was very young at the time. After leaving the Army, he became an over the road truck driver. He drove a semi across 48 states and Canada for 30 years. In 2006, he went to work for Des Moines Area Community College teaching semi-truck driving. After 17 years of teaching at the college, he retired with his wife.

d. He would like to have his discharge upgraded at this time. He has raised a family and enjoyed his chosen profession. He did not let that incident, so many years ago, define him. He is a family man, grandfather, a mason and shriner. He helps support the burn hospital for shriner children.

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

a. He enlisted in the Regular Army on 14 June 1974. The highest rank he held was private first class (PFC)/E-3.

b. On 7 July 1975, he accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ), for being absent without leave (AWOL) from on or about 20 June 1975 to on or about 27 June 1975. His punishment included reduction to private (PV2)/E-2, forfeiture of \$75.00 for a period of one month, 14 days restriction and 14 days extra duty.

c. On 17 October 1975, the applicant was found guilty of criminal mischief, felony by the State of Colorado, District Court, El Paso County.

d. On 29 October 1975, he accepted NJP, under Article 15, UCMJ, for being AWOL from on or about 21 July 1975 to on or about 13 August 1975 and from on or about 21 August 1975 to on or about 3 September 1975. His punishment included reduction to private (PV1)/E-1, 45 days extra duty, and 45 days restriction.

e. On 31 October 1975, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-206 (Personnel Separations – Discharge Misconduct (Fraudulent Entry, Conviction by Civil Court, and AWOL or Desertion), Section VI, by reason of conviction by civil court. The commander listed the following reason for the proposed action: convicted for criminal mischief, felony by the District Court, El Paso County on 17 October 1973. The commander explained the applicant's rights, which included:

(1) To request appointment of military counsel – a qualified lawyer – to represent him in a hearing before a Board of officer.

(2) To submit statements in his own behalf.

(3) He may waive these rights.

(4) The commander noted that if the applicant did not reply within 30 days, it would be presumed that the applicant had waived his rights and separation action would proceed, with a separation from the service with an Undesirable Discharge.

f. On 31 October 1975, the applicant acknowledged receipt of his commander's separation notification and stated he had been advised of his rights under Article 31, UCMJ. He stated that he had made this statement voluntarily, knowingly, and of his own free will. He also stated that the Army was not for him because when he came in the Army he always got in trouble, and he hoped to get a good discharge.

g. On the same date, the applicant's immediate commander recommended approval of the separation under the provisions of AR 635-206, for misconduct, civil conviction, criminal mischief and recommended the applicant receive an Undesirable Discharge Certificate. The intermediate commanders echoed the immediate commander's recommendation.

h. On 18 November 1975, the applicant underwent a mental status evaluation for the purpose of separation. The evaluating official noted the applicant was psychiatrically cleared for discharge.

i. On 18 November 1975, the applicant underwent a medical examination for the purpose of separation. The evaluating physician noted the applicant was qualified for separation.

j. On 31 December 1975, the separation authority approved the discharge, directed the applicant be reduced to the lowest enlisted grade and issued an Undesirable Discharge Certificate. The commander accepted the waiver of a hearing before a Board of Officers by the applicant.

k. The applicant was discharged on 13 January 1976. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of "AR 635-200," in the rank/grade of private/E-1, and his service was characterized as under other than honorable conditions. He completed 1 year, 4 months, and 28 days of net active service during the covered period and was issued a separation program

designator code of JKB and reenlistment code RE-4. He was awarded or authorized the National Defense Service Medal. He had 62 days of lost time from:

- 21 July 1975 – 13 August 1975
- 21 August 1975 – 2 September 1975
- 3 September 1975 – 4 September 1975
- 5 September 1975 – 29 September 1975

4. On 18 November 2024, the Criminal Investigation Division provided a sanitized military police report (MPR) pertaining to the applicant. The MPR states the applicant was apprehended by \_\_\_ on 23 July 1975 for complicity to criminal mischief and booked into county jail.

5. 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.

6. 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, the evidence found within the military record, and published Department of Defense guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, his record of service, the frequency and nature of his misconduct, his civil conviction for felony misconduct, the reason for his separation and the character of service he received upon discharge. The Board considered the report provided by the CID regarding his civil arrest. The Board found insufficient evidence of mitigating factors relative to the applicant's misconduct. The Board considered the applicant's statement of post-service employment, but found it was not supported by further evidence and was insufficient to result in a clemency determination. Based on a preponderance of 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 (AR) 635-206 (Personnel Separations Discharge – Misconduct (Fraudulent Entry, Conviction by Civil Court, and Absence Without Leave or Desertion)), in effect at the time, states:

a. Section VI, Conviction by Civil Court, that an individual will be considered for discharge when he has been initially convicted by civil authorities, or action taken against him which is tantamount to a finding of guilty, of an offense for which the maximum penalty under the Uniform Code of Military Justice is death or confinement in excess of 1 year.

b. An individual discharged for conviction by civil court normally will be furnished an undesirable discharge certificate except that an honorable or general discharge certificate may be furnished if the individual being discharged has been awarded a personal decoration, or if warranted by the particular circumstances in a given case.

3. 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. 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.

b. 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.

4. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-206, Section VI, for misconduct-conviction by civil court would receive a separation code of "JKB."

5. 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.

6. 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.

//NOTHING FOLLOWS//