

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240005782

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions to honorable, or alternatively, general, under honorable conditions

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Statement
- Veteran's Brief in Support of Claim, 9 January 2024
- Applicant's Complete Service Record, Medical Records, and Dental Records (143 pages)
- DD Form 214, 25 April 1977

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:

a. When he was nine years old his mother passed away from a stroke. He went to live with his older sister, who helped raised him. On the weekends when his dad was not working, he went to stay with him. This went on for several years until his dad met and married the applicant's stepmom. Things were fine for a while then his stepmom started comparing him to her son who was a track star at school, and he couldn't do anything right. He had to redo chores and after mowing the yard he had to trim the yard with a pair of scissors. When he started working his stepmom would take his check and only give him a few dollars for spending, so he never really learned how to manage his own money. He wanted to get away from the situation, so he joined the Army at the age of 18. He now thinks he was not emotionally strong enough to handle the decision that he made.

b. When he was in basic training for only a few weeks, his dad passed away suddenly with cancer. He was devastated and shocked because he was the only parent that he had left, and they were very close. After basic training and advanced individual training, he was stationed at Fort Hood, TX. His older brother was a sergeant first class (SFC) and military police (MP) in the Army. His brother started interfering in his life and his military life. When the applicant was stationed at Fort Hood, he was drinking while drunk and had a car accident on post. When the MP's arrived at the accident the MP recognized his name and called his brother, who was stationed at Fort Gordon, GA or Fort Polk, LA, and told him what happened. His brother told the MP to keep him locked up as long as possible, to teach him a lesson. The applicant did receive an Article 15.

c. He could not handle the harassing and the interference from his brother, plus the loss of his parents and other issues, so he left the Army and went AWOL. He went back to St. Louis for a few months and then decided to go back to the Army to serve out his time. He turned himself in to the military police at the Federal Building. He feels like he was never given a choice to make up the lost enlisted time. He feels like he was just processed out the Army with no consultation. It has been 43 years since he was discharged, and he is now 64 years old. He is hoping for an upgrade in his discharge.

3. The applicant provides the following:

a. A brief in support of his claim, dated 9 January 2024, which states, in effect:

(1) The applicant joined the U.S. Army on 29 November 1974. During his service, he worked as a vehicle repairman in a motor pool. He was discharged with an other than honorable characterization of service after being AWOL for 98 continuous days. He has accepted full responsibility for his mistake for going AWOL. This acceptance is further evidenced by his voluntary surrender to the military authorities and his candor in discussing his reasoning for going AWOL. He understands the mistake he made in service and is hopeful that the ABCMR will accept his acceptance of responsibility.

(2) The punishment imposed upon him was far too harsh. First, this was a nonviolent offense that occurred solely because of his family issues. Further, this discharge status did not end at the DD Form 214. Since the time of his discharge, he has been unable to obtain assistance from the Department of Veterans Affairs, which is a collateral consequence of the other than honorable discharge.

(3) His AWOL was not because he no longer wanted to serve in the military, or he was trying to avoid service. His absence was due to his only parent passing away suddenly and needing to be surrounded by family to get through it. He reflects that the heaviness of his misconduct, the interference by his brother, and the passing of his

father was too much for him to deal with at once. He made a mistake by leaving and voluntarily returned to own up to his misconduct, with the hopes of finishing his service.

b. His complete service record, to include his medical records and dental records.

c. The complete brief and service records are available for the Board to review.

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

a. He enlisted in the Regular Army on 29 November 1974. The highest rank/grade he held was private first class (PFC)/E-3.

b. His duty status changed on the following dates:

- Present for Duty (PDY) to AWOL – 3 January 1977
- AWOL to Dropped from Rolls (DFR) – 1 February 1977
- DFR to Attached, PDY – 5 April 1977 (surrendered to military authorities)

c. Court-martial charges were preferred against the applicant on 8 April 1977. His DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 3 January 1977 to on or about 5 April 1977.

d. On 8 April 1977, after consulting with legal counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial under Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. The applicant acknowledged he made the request of his own free will and was not coerced by any person. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to at least one of the charges against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He stated that under no circumstances did he desire further rehabilitation, for he had no desire to perform further military service. He further acknowledged he understood that if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veteran's Administration, he could be deprived of his rights and benefits as a veteran under both Federal and State law and encounter substantial prejudice in civilian life because of an under other than honorable discharge.

e. The applicant signed a Statement of Medical Condition on 8 April 1977, which shows he underwent a separation medical examination more than three working days prior to his departure from place of separation.

f. On 12 April 1977, the immediate commander recommended approval and recommended an under other than honorable conditions discharge. The commander

noted that the applicant found himself unable to adjust to the military and rehabilitation efforts would be considered futile.

g. The separation authority approved the recommended discharge on 18 April 1977, directed the applicant be reduced to the lowest enlisted grade, and be issued an under other than honorable conditions discharge.

h. The applicant was discharged on 25 April 1977. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, in the rank/grade of private (PV1)/E-1, and his service was characterized as under other than honorable conditions. He completed 2 years, 1 month, and 19 days of net active service during the covered period. He was assigned a separation code of JFS and reenlistment code of RE-3B. This form also shows in:

- Item 21 (Time Lost (Preceding Two Years)): 116 days
- Item 26 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized): Sharpshooter Marksmanship Qualification Badge (rifle)
- Item 27 (Remarks): Total time lost under the provisions of Title 10 USC 972: 98 days

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. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

7. The Board should consider the applicant's new argument and his overall 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 warranted. Based upon the over two years of honorable service completed prior to the misconduct leading to the applicant's separation, as well as the stressors the applicant expresses he was experiencing at the time of his misconduct, the Board concluded there was sufficient evidence to grant clemency by upgrading the applicant's characterization of service to General.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

3/31/2025

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) (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a member who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, regardless of whether the charges are referred to a court-martial and regardless of the type of court-martial to which the charges may be referred. The request for discharge may be submitted at any stage in the processing of the charges until final action on the case by the court-martial convening authority. Commanders will ensure that a member is not coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the member may elect to submit a request for discharge for the good of the service. The member will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a member who is discharged for the good of the service. However, the discharge authority may direct an honorable or general discharge if such are merited by the member's overall record during the current enlistment.

b. 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.

c. 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.

d. A discharge under other than honorable condition is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and for the good of the service.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 10 for conduct triable by court-martial would receive a separation code of "JFS."

4. 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.

5. 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//