

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240005952

APPLICANT REQUESTS:

- an upgrade of his character of service from under other than honorable conditions (UOTHC)
- change of authority and reason to "Secretarial Authority" with corresponding separation code

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

- DD Form 149 (Application for Correction of Military Record), 15 February 2024
- legal counsel argument
- Exhibit 1 – Enlistment Documentation
- Exhibit 2 – DA Form 2-1 (Personnel Qualification Record)
- Exhibit 3 – Self-authored statement of military timeline
- Exhibit 4 – Personnel Control Facility Interview Sheet
- Exhibit 5 – Orders 56-218, 25 February 1977
- Exhibit 6 – Absent Without Leave (AWOL) – Deserter Verification Sheet
- Exhibit 7 – DD Form 458 (Charge Sheet), 7 February 1977
- Exhibit 8 – DA Form 268 (Report for Suspension of Favorable Personnel Actions)
- Exhibit 9 – DA Form 2627-1 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), 29 November 1976
- Exhibit 10 – Separation Authority Approval Memorandum, 15 February 1977
- Exhibit 11 – Applicant's Election of Rights, 10 February 1977
- Exhibit 12 – Memorandum for Applicant's Reason/Authority for Separation, 25 February 1977
- Exhibit 13 – DD Form 214 (Report of Separation from Active Duty), 25 February 1977
- Exhibit 14 – Resume
- Exhibit 15 – Restaurant reviews
- Exhibit 16 – character reference statement, from P.R.N., 7 February 2023
- Exhibit 17 – character reference statement, from M.J.P. Retired Chief of W____ Police Department, 17 February 2023

- Exhibit 18 – character reference statement, from D.C.H. Retired Chief of W___ Police Department, 18 February 2023
- Exhibit 19 – character reference statement, from N.W., 5 February 2023
- Exhibit 20 – character reference statement, from J.A.S., 6 February 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 provides an 11-page timeline of his military service. The following is a summary of his self-authored statement.

a. He enlisted at the age of 17, at Fort Knox, where he describes basic training as a fast-paced environment and every move you made was under direct order from a drill sergeant. He graduated basic training with no problems or disciplinary actions and was inflated with a sense of pride.

b. He went on to on-the-job training, at Fort Hood, the on-the-job training experience was unlike what he learned in basic training, he was slightly in shock with all the differences. He met some friends, settled into a routine while learning his job. Upon his graduation he and another Soldier drove back to their hometown while on leave. While at home he caught up with family and friends, had a run in with the police who were searching for his brother, he was glad to leave home and return to Fort Hood.

c. Upon arrival to Fort Hood, he started to get into partying, as long as he showed up for duty, he was fine. He made a friend, who partook in the use of illegal drugs which included marijuana and phencyclidine, he ended up distancing himself from this friend due to his use of drugs. He began living his life, and met a girl whom he started dating, one weekend he and his friend were under the impression they would be going to the field on a Monday, so they left on a Friday evening to have some fun. Upon their return to Fort Hood, they learned they were processed out of the 27th Maintenance to the 15th Medical Battalion, they found out from their noncommissioned officer they were "AWOL;" however, they were never informed of their reassignment.

d. Processing into the 15th Medical Battalion, he realized it was a smaller unit and had some disadvantages for the location of the unit. He describes instances where he was doing his job, meeting with friends, meeting with his girlfriend, when he described the swine flu epidemic breaking out. He was supposed to get the vaccination; however, he was marked as having it complete. The Army stopped issuing the vaccinations suddenly and this caused him to have an attitude. He started to not care about what

was right and wrong in the military. He pretended not to acknowledge a full bird Colonel, and he spiraled down a rabbit hole.

e. During an incident where he was told to complete S- service on his truck, he completed his task. When he arrived back to the office another Sergeant yelled at him and the two got into an argument. The applicant's Lieutenant jumped from his desk and ordered him to apologize to his Sergeant, to which he replied with harsh words to the Lieutenant.

f. After his exchange of harsh words towards his Lieutenant, he received an Article 15 for insubordination. After he completed his punishment, he was labeled a troublemaker, and his friends began distancing themselves from him. He remembers not receiving any additional help or even someone to talk to. Due to his attitude, he received a charge of AWOL. He got into an altercation with some other Soldiers; when he knew he would be in trouble, he ended up going AWOL to Alabama and then went to Michigan to lay low, knowing someday everything was going to be resolved.

g. While in Michigan, he did not have any opportunities to better himself and intended to move to New Hampshire. During his route to New Hampshire, he met good people who helped him along the way, all of whom did not know of his AWOL status from the Army. While on the bus for his final destination to New Hampshire, because of him showing his identification to a Customs officer, he was apprehended and taken for questioning. Two Federal Marshalls picked him up because of his AWOL status.

h. He was transported as a prisoner along with others who were in an AWOL status. He was housed in a prison until he received further transportation to Fort Dix, New Jersey. While in Fort Dix, he awaited his fate and was given the options of court-martial charges or discharge. He chose to be discharged, signed his paperwork, and was done with the Army. The next day he made himself a promise to start making something of his life.

3. Counsel states the applicant was irresponsible in his youth, and has held onto his mistakes for over 47 years. Counsel argues the applicant's young age, impressionability, and negative influences from other Soldiers, combined to create a situation where the applicant did not feel comfortable. The applicant's lack of education, high susceptibility to outside influences, the negative view from his Command, seeing multiple instances of drug usages, fraternization, other Soldiers going AWOL, forging vaccination records, and overall attitude played a large role in his negative view of the Army.

a. Counsel asserts the applicant's post service achievements. Stating the applicant worked in various construction jobs, started receiving an education in electrical engineering, earned various verifications, attending schools, completed annual

assessments. He was promoted to crew leader for his outstanding work and utility to the company where he received additional duties managing and training other staff in electrical systems. He became a safety superintendent where he managed spacer cable projects and after 32 years of hard work, he retired. He and his spouse have a family-owned restaurant where they receive good reviews and use their restaurant to give back to their community. Counsel references the applicant's character statements which summarize the applicant's positive character and positive attributes in life.

b. Counsel concludes by requesting the Board grant the applicant's request and allow the applicant to clear his name from the mistakes made in his youth. Stating, in effect, despite the applicant's discharge characterization and stigma of his UOTHC discharge, he has proven himself to be a man of honor with his deeds and actions post service.

4. The applicant enlisted in the Regular Army on 22 December 1975, for a 3-year period. He was awarded the military occupational specialty of 52B (Power Generation Equipment Operator/Mechanic). The highest rank he attained was private/E-2.

5. The applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ), on 29 November 1976, for failing to go to his prescribed appointed place of duty on or about 29 November 1976, to wit: Command Muster Formation. His punishment imposed was reduction to E-1 (suspended) and forfeiture of \$50.00 (\$25.00 suspended one month).

6. The applicant was reported as AWOL on or about 1 December 1976 and was dropped from rolls on 30 December 1976. The relevant DA Form 3836 (Notice of Return of US Army Member from Unauthorized Absence) shows he was apprehended by civilian authorities on 3 February 1977.

7. A DA Form 4187 (Personnel Action) and Personnel control Facility Interview Sheet shows the applicant surrendered to military authorities.

8. Court-martial charges were preferred against the applicant, for violation of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows he was charged on 7 February 1977, with going AWOL on or about 1 December 1976 and remaining AWOL until on or about 3 February 1977.

9. The applicant consulted with legal counsel on 10 February 1977. After consulting with counsel, he executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected not to submit a statement in his own behalf.

10. On 10 February 1977, the applicant's immediate and intermediate commander's recommended approval of the applicant's request for discharge for the good of the service and further recommended issuance of an UOTHC discharge.

11. The separation authority approved the applicant's request for discharge on 15 February 1977, directed the applicant be reduced to the lowest enlisted grade and issued a DD Form 794A (UOTHC Discharge Certificate).

12. The applicant was discharged accordingly on 25 February 1977, under the provisions of AR 635-200, Chapter 10, in the grade of E-1. His DD Form 214 shows his service was characterized as UOTHC with separation program designator code JFS and reenlistment code RE-4. He served 1 year and 2 days of net active service with 64 days of time lost.

13. Through counsel, the applicant provides:

a. Resume summarizing his experience in the utility industry starting in 1980 until retirement in 2022. He served in various positions, education he received, his skills, and activities to include volunteer service time and Additional documentation for restaurant reviews for the Barn and Thistle restaurant.

b. A character reference statement, from P.R.N. retired fire officer, dated 7 February 2023, summarizing the applicant as helpful when they met, he was having car troubles and the applicant helped him and they have been friends since. He believes the applicant is capable, a problem solver, a responsible leader, confident, competent, motivated, and respectful. They've shared in conversations about their service, where the applicant spoke with a sense of pride and regret of his immature behavior. P.R.N. knows the applicant has lived an honorable life since his discharge and is a fine example of a Soldier who regrets his discharge and accepts responsibility of his actions.

c. A character reference statement, from M.J.P. retired Chief of Police for W____, dated 17 February 2023, summarizing their relationship as personal and professional for over 35 years. M.J.P. has never questioned the applicant's integrity, knowing he is an honest man who loves his family, friends, and his country. He is an example of a good American man who has an incredible family, has worked hard his entire life, and has helped people and communities in emergency situations when they needed power.

d. A character reference statement, from D.C.H. retired Chief of Police for W____, dated 18 February 2023, summarizing the applicant as someone he worked very close with who is professional and puts his customers first. The applicant discussed with D.C.H. his military discharge and it seems to him there were a lot of political opinions during the Vietnam timeframe where Soldiers were treated horribly while in Vietnam but even worse after Vietnam. He believes the applicant is a great asset to their community and is proud to call him his friend.

e. A character reference statement, from N.W. son of the applicant, dated 5 February 2023, summarizing his father as a family man whose family always comes first. They have a tight knit family, and he is amazed by how his father showed his family values due to him not having a father and barely a mother. He has fond early childhood memories of his father and recalls their experiences throughout childhood to his adulthood. He states his father taught him what it means to be resilient, self-reliant, how to ask for help when you are in need, he is a man of many talents with the ability to do anything he wants. N.W. is a proud social studies teacher, he has a passion for learning, adventure, and music, which he has learned from his father. He knows the applicant's personal conduct as a family man and a valuable member of the utility industry while being an active citizen in town. His father is an honorable man, who could have gone down a dark road with the cards he was dealt, but he chose to rise up regardless of the label he received by the Army.

f. A character reference statement, from J.A.S. coworker of the applicant, dated 6 February 2023, summarizing the applicant as a person he has always looked up to. He and the applicant worked together, the applicant was someone with knowledge and answers he needed, he is friendly, displays enthusiasm and initiative, has excellent communication skills, and is incredibly talented. He believes whatever shortcomings the applicant had while serving he has more than made up for in his civilian life.

14. Regulatory guidance provides:

a. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service. An UOTHC characterization of service is normally considered appropriate.

b. When an individual is discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial, "JFS" is the appropriate separation code.

15. 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.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation and the post-service character evidence showing he applicant has learned and grown from the events leading to his separation, the Board concluded that granting clemency was appropriate by upgrading the applicant's characterization of service to Under Honorable Conditions (General).

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| ■ | ■ | ■ | 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



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 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code "JFS" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service.
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. 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.

b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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.

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

3. 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 (BCM/NR) 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//