

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 February 2025

DOCKET NUMBER: AR20240006030

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

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Character References (3)
- DD Form 214 (Report of Separation from Active Duty), dated 3 July 1974

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 is requesting an upgrade of his under other than honorable conditions discharge.

a. He is contesting the allegation of being absent without leave (AWOL). He did not go AWOL and would like his record corrected to facilitate receiving benefits from the Department of Veterans Affairs (VA). He previously attempted to get an upgrade; however, due to illness in his family and his own illness, it was postponed. He always dreamed of serving in the military and follow in the footsteps of all the men in his family. While basic combat training was attainable, advanced individual training proved to be more challenging. He scored high on tests, but felt he had competition from a slender young man in charge of the platoon.

b. He went home on a weekend pass to see his family but returned late to formation. He was confronted about his tardiness and told no excuse was acceptable. He was directed to report to the company office. He was given odd jobs and teased about his inability to make coffee. He requested to go to class and was instead told to

continue reporting to the office to ensure he learned the requirements needed to pass his test. He was never allowed to return to take his test.

c. He requested a one-day pass to see his family and the sergeant agreed. When he arrived home, the police arrested him, and returned him to Fort Bragg. He was informed that he was AWOL and could either do hard labor for the rest of his life, go to prison, or be discharged. With his family depending on him at home, he did not contest the discharge. He had no guidance and no one to advocate for him. He was punished for something he did not do and has been subjected to that punishment his whole life.

3. The applicant provides:

a. A letter from Ms. K.W. where she expressed her admiration for the applicant's exceptional character. She had the pleasure of getting to know him through one of her clinics. She noted his resilience is commendable even though he was bullied while in the military. Overcoming such hardships with grace shaped his own journey but also inspired those fortunate enough to know him.

b. Two additional references were provided from members of his church. The individuals described the applicant as a good man, gentle, kind, generous, and volunteering in the church and community. He was dedicated, hardworking, and has contributed faithfully to his community for many years. The applicant was deserving of benefits from the VA.

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

a. He was inducted into the Army of the United States on 12 September 1973.

b. His DA Form 20 (Enlisted Qualification Record) lists the following periods of time lost:

- 19 February 1974 to 25 February 1974 (7 days)
- 1 April 1974 to 27 May 1974 (57 days)

c. A Federal Bureau of Investigation (FBI) report dated 13 June 1974 shows the applicant was apprehended on 28 May 1974 and returned to Fort Bragg, NC.

d. On 3 July 1974, the applicant signed a statement indicating he desired a copy of his separation proceedings and understood he was being discharged under the provisions of AR 635-200 (Enlisted Separations) and/or AR 635-206 - Discharge (Misconduct, Fraudulent Entry, AWOL, Desertion, Conviction by Civil Court).

e. On 3 July 1974, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 6 months and 29 days of active service with 64 days of lost time. It also shows he was awarded or authorized:

- National Defense Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)

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

6. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

7. 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, the military record, and regulatory guidance were carefully considered. Based upon the multiple AWOL offenses reflected in the record and the lack of substantiating evidence to support the applicant's statement, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

| <u>Mbr 1</u> | <u>Mbr 2</u> | <u>Mbr 3</u> |                      |
|--------------|--------------|--------------|----------------------|
| :            | :            | :            | GRANT FULL RELIEF    |
| :            | :            | :            | GRANT PARTIAL RELIEF |
| :            | :            | :            | GRANT FORMAL HEARING |
| :XXX         | :XXX         | :XXX         | 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.

//SIGNED//  
X  
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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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. 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.

b. 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. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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/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 based on 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.

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//