

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 February 2025

DOCKET NUMBER: AR20240006088

APPLICANT REQUESTS:

- an upgrade of his under other than honorable discharge
- a personal appearance hearing before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- DD Form 214 (Report of Separation from Active Duty) for the period ending 3 November 1976
- Self-authored statement, 25 January 2024
- Six Character statements
- Numerous photographs

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 would like an upgrade to his discharge. While he believes in serving, he left the Army and became a family man. All his life he served this country and his family by serving as a Bishop of the Church of Jesus Christ of Latter-Day Saints for more than 5 years. He still continues to serve his fellow man and his family. He notes he has raised eight children, is a good citizen, doesn't have a record, and has lived in California for 50 years.
3. In a self-authored statement, dated 25 January 2024, he states, in effect, before he joined the Army in September 1974, he fell in love and planned to get married. After moving to his first duty station, he took leave to be with his girlfriend in California and got married. Upon return from leave, he was unable to get his wife to his duty station. He was given orders to go to Germany, his wife did not want to go and subsequently he

went absent without leave (AWOL). He turned himself in at the Compton Police Station and was picked up by the military police from Fort Ord, CA.

4. He enlisted in the Regular Army on 26 September 1974 for a period of 3 years. He was promoted to the rank/grade of private first class/E-3 effective 14 April 1975.

5. The applicant accepted nonjudicial punishment (NJP) on 15 February 1976, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), in that at on or about 1000 hours on 31 January 1976, he did without authority fail to go at the time prescribed to his appointed place of duty, to wit: 2d Armored Division Guard House, 2d Armored Division, located at Fort Hood, TX in violation of Article 86, UCMJ. His punishment was reduction to the grade of private/E-2, suspended for a period of one month and forfeiture of \$80 pay for one month. He elected not to appeal.

6. The applicant accepted NJP on 28 April 1976, under the provisions of Article 15 of the UCMJ, in that at on or about 0730, on 27 April 1976, he did without authority fail to go at the time prescribed to his appointed place of duty, to wit: Battery C, 1st Battalion, 16th Field Artillery, 2d Armored Division field location, Firing Point 239, located at Fort Hood, TX in violation of Article 86, UCMJ. His punishment was reduction to the grade of private/E-2, forfeiture of \$93 pay for one month, and restriction for a period of 14 days, suspended for 30 days. He elected not to appeal.

7. DA Form 4187 (Personnel Action), on 24 May 1976 shows his duty status was changed from "present for duty" to "AWOL" effective 24 May 1976.

8. DA Form 4187, on 22 June 1976 shows his duty status was changed from AWOL to "dropped from unit rolls (DFR)" effective 22 June 1976.

9. DA Form 4187, on 6 October 1976 shows he surrendered to military authorities at Long Beach Shore Patrol, Long Beach, CA thereby changing his duty status from "DFR" to "present for duty" effective 4 October 1976.

10. The DD Form 458 (Charge Sheet), on 5 October 1976, while assigned to the Fort Ord, CA Personnel Control Facility, shows he was charged with one specification of violation of Article 86, in that he did on or about 24 May 1976, without authority, absent himself from his organization to wit: C Battery, 1st Battalion, 16th Field Artillery, 2d Armored Division located at Fort Hood, TX, and did remain so absent until on or about 4 October 1976.

11. On 5 October 1976, he was counseled by a Staff Judge Advocate (SJA) Defense counsel in regard to his pending trial by court-martial and was informed of his ability to submit a request for discharge for the good of the service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He

acknowledged receipt of the counseling and the affect of Federal Veteran's Benefits and issuance of an undesirable discharge.

12. After consulting with legal counsel on 12 October 1976, he voluntarily requested discharge for the good of the service under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service in lieu of trial by court-martial.

a. He was making this request of his own free will and has not been subjected to any coercion whatsoever by any person. By submitting this request for discharge, he acknowledges that he understood the elements of the offense charged and is guilty of the charges against him, which authorizes the imposition of a bad conduct or dishonorable discharge. Moreover, he states that under no circumstances does he desire further rehabilitation, for he has no desire to perform further military service.

b. He acknowledged he understood that if his discharge request were approved, he could be discharged under other than honorable conditions and furnished an Undesirable Discharge Certificate. He further acknowledged that as a result of such a discharge, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration (now known as the Department of Veterans Affairs), he could be deprived of his rights and benefits as a veteran under both Federal and State laws, and he could expect to encounter substantial prejudice in civilian life by reason of an undesirable discharge. He elected to submit a statement in his own behalf. His statement noted he went AWOL due to his bad feelings toward the Army and wanting to take care of his family.

13. The applicant's immediate and intermediate commanders, by memoranda, recommended his request for discharge under provisions of Army Regulation 635-200, Chapter 10, be approved on 12 October 1976, 14 October 1976 and 18 October 1976, respectively.

14. The approval authority approved the applicant's request for discharge on 26 October 1976, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial, and directed that he be reduced to the lowest enlisted grade and that he be issued an Undesirable Discharge Certificate.

15. He was discharged on 3 November 1976. His DD Form 214 shows in:

- item 6a (Grade, Rate, or Rank) – Private
- item 6b (Pay Grade) – E-1
- item 9c (Authority and Reason) – Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, Separation Code – JFS (for the good of the service in lieu of trial by court-martial)
- item 9e (Character of Service) – Under Other Than Honorable Conditions

- item 18a (Net Active Service This Period) – 1 year, 8 months, and 25 days
- item 12c (Total Active Service) – 1 year, 8 months, 25 days
- item 27 (Remarks), contains the entry: "133 days lost under 10 USC 972 [Title 10, U.S. Code, Section] from 24 May 1976 thru 30 October 1976"

16. He provides six character statements that attest to his character, his missionary work for the church, his devotion to his church, and love for his family. He also provides his certificate ordaining him as a Bishop of the Church of Latter-Day Saints. He further provides numerous photographs of himself.

17. The Board should consider the applicant's statement in accordance with the published equity, injustice, or clemency determination guidance.

**BOARD DISCUSSION:**

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with absenting himself from his unit from 24 May 1976 to 4 October 1976, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board was convinced by the compelling evidence submitted by the applicant of his sustained honorable conduct and personal growth since discharge, including over 50 years of marriage, demonstrating long-term commitment, stability, and strong family values and a record of law-abiding behavior and community involvement. Therefore, the Board determined an upgrade to under honorable conditions (General) was warranted.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
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:XX	:XX	:XX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 3 November 1976 to show an under honorable conditions (General) characterization of service.

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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. The basic authority for the separation of enlisted personnel.
  - a. Paragraph 3-7(a) stated 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.
  - b. Paragraph 3-7(b) stated 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.
  - c. Chapter 10 (Discharge for the Good of the Service) provided that a Soldier who committed an offense or offenses for which the authorized punishment included a punitive discharge could submit a request for discharge for the good of the service in lieu of trial by court-martial.
    - (1) Commanders would ensure that an individual would not be coerced into submitting a request for discharge for the good of the service. The member would be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge.

(2) The request could be submitted at any time after charges were preferred and must have included the individual's admission of guilt.

(3) If the member elected to submit a request for discharge for the good of the service after receiving counseling, he would personally sign a written request certifying that he had been counseled, that he understood his rights, that he may receive a discharge under other than honorable conditions, and that he understood the adverse nature of such a discharge and the possible consequences.

(4) A discharge under other than honorable conditions normally were appropriate for a Soldier who was discharged for the good of the service. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

d. Paragraph 14-4 (Authority for Discharge or Retention) stated upon determination that a member is to be separated with a discharge under other than honorable conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority.

4. 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//