

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 February 2025

DOCKET NUMBER: AR20240006132

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

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Applicant Statement
- DD Form 214 (Report of Separation from Active Duty), 12 November 1973
- Character Letters (4)
- Background/Record Checks, February 2024

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. He feels he was not represented properly, and he really had no one to speak up for him. He was only in his fellow Soldier's room drinking beer, at the age of 19. He had only been in Germany for six months at the time of the incident. He did not really know anyone, except for his squad. He feels he was mistreated as far as being arrested and kicked out of the military. He has not been in any trouble since he was separated from the military.

b. In November 1973, in Germany, he and about 4 to 6 other service men were in a two-man room. There was a knock on the door and one of the guys who lived in the room opened the door. Within seconds people forced their way into the room. The room was full of about 20 to 30 people. Some had chains, bats and/or knives. He remembers standing on one of the beds, against the wall. The two guys whose room they were in

got hurt. The incident lasted less than 5-10 minutes. After that a few words were exchanged and they left. After that incident, there was fighting going on at the company he was in. There was a lot of racial tension between the service men, which he did not know about until later. He states he did not participate in any of the violence in any way.

c. A few days after the incident him and two other service men were told to report to the military police station for questioning, and he was put in a cell. He had never been to jail and could not understand why he was there because he did nothing wrong. He did not talk to anyone and was not asked any questions. He was not allowed to call anyone. He does not remember exactly how long he was in jail, maybe 2 to 4 weeks. One day a military lawyer came to him and said he could get out of the military or go to jail for inciting a riot. He felt like he was not treated fairly in the situation that he was in because he did not do anything wrong. He did not have anything to do with all the fighting that had taken place. He signed the discharge papers because he felt he could be physically and mentally harmed. He believed at the time that getting out of jail was his only option to keep himself safe.

3. The applicant provides the following:

a. Four-character letters which states the applicant has proven to be a faithful, loyal, and hardworking man who is eager to assist others and actively volunteers in the community.

b. Background and record checks from the Columbia County Sheriff's Office, Florida Department of Law Enforcement, and the Lake City Police Department which show the applicant has no criminal record.

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

a. He enlisted in the Regular Army on 28 June 1972. The highest rank he held was private (PV2)/E-2.

b. Court-martial charges were preferred against the applicant on 17 September 1973. His DD Form 458 (Charge Sheet) shows he was charged with:

- Charge I, one specification of being disrespectful in language and deportment toward his superior noncommissioned officer on or about 8 September 1973
- Charge II, one specification of stealing \$30.00 from PV2 R\_D\_, on or about 8 September 1973
- Charge III, one specification of committing an assault upon PV2 R\_D\_ by striking him with an afro hair comb pick, and did thereby intentionally inflict grievous bodily harm upon him, on or about 8 September 1973

c. Court-martial charges were preferred against the applicant on 24 October 1973. His DD Form 458 shows he was charged with:

- Charge I, one specification of on or about 23 October 1973, taking part in a riot.
- Charge II, one specification of on or about 23 October 1973, committing an assault upon PV2 S\_H\_, by striking him upon the body with his fists.
- Charge II, one specification of on or about 23 October 1973, committing assault upon specialist four L\_C\_, by striking him upon the body with his fists.
- Charge II, one specification of on or about 23 October 1973, committing an assault upon private first class B\_C\_, by striking him upon the body with his fists.
- Charge III, one specification of on or about 23 October 1973, behaving himself with disrespect toward his superior commissioned officer, by using an improper tone of voice in deportment towards him.

d. On an unspecified date, 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 that 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 may be discharged under other than honorable conditions and furnished an Undesirable Discharge Certificate. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army 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 by reason of an undesirable discharge.

e. On 27 October 1973, the applicant's immediate commander recommended approval of the requested discharge and recommended an Undesirable Discharge Certificate be issued. The intermediate commanders echoed this recommendation.

f. On 2 November 1973, the separation authority approved the discharge, directed he be issued an Undesirable Discharge (DD Form 258A), and reduced to the lowest enlisted grade.

g. The applicant underwent a medical examination for the purpose of separation on 7 November 1973. The examining official noted the applicant was qualified for separation.

h. On 9 November 1973, the applicant underwent a mental status evaluation. The evaluating official noted the applicant had the mental capacity to understand and

participate in board proceedings and he met the retention standards prescribed in AR 40-501 (Standards of Medical Fitness).

i. The applicant was discharged on 12 November 1973. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 10-1, in the rank/grade of private (PV1)/E-1, and his service was characterized as under other than honorable conditions. He completed 1 year, 4 months, and 15 days of net service this period. This form also shows in:

- Item 10 (Reenlistment Code): RE-3, 3C
- Item 26 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized): National Defense Service Medal

5. The Army Discharge Review Board denied the applicant's request for an upgrade on 17 May 1976 and 6 February 1980.

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 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. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct involved and the applicant's statement concerning the incidents, the post-service character evidence provided by the applicant, and the liberal consideration guidance provided to the Board, the Board concluded there was sufficient evidence to grant relief by upgrading the applicant's characterization of service to General, Under Honorable Conditions.

BOARD VOTE:

| <u>Mbr 1</u> | <u>Mbr 2</u> | <u>Mbr 3</u> |                      |
|--------------|--------------|--------------|----------------------|
| :XXX         | :XXX         | :XXX         | 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

//SIGNED//

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) 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 provided that an individual whose conduct has rendered him triable by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge may submit a request for discharge for the good of the service. The request for discharge may be submitted at any time after court-martial charges are preferred against him. Commanders will ensure that there is no element of coercion in submitting a request for discharge for the good of the service. The member will be given a reasonable time to consult with counsel and to consider the wisdom of submitting such a request for discharge. If he elects to submit the request, the member will personally sign the written request, certifying that he understands that he may receive a discharge under other than honorable conditions and that he understands the adverse nature of such a discharge and the possible consequences thereof. An undesirable discharge certificate was normally furnished to an individual who was discharged for the good of the service. However, the discharge authority may direct an honorable or general discharge, if warranted.

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 has been cooperative and conscientious in doing his assigned tasks, he may be furnished an honorable discharge.

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. An undesirable discharge is an administrative separation from the service under conditions other than honorable. It may be issued for unfitness or misconduct. An undesirable discharge will be directed only by a commander exercising general court-martial jurisdiction, a general officer in command who has a judge advocate officer on his staff, or by higher authority, based on the approved recommendation of a board of

officers, unless the member waives the board or requests discharge for the good of the Service.

3. 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.

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 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//