

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240006298

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

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

- DD Form 149 (Application for Correction of Military Record), 23 May 1969
- Photograph, 1969

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 was part of the "Fort Jackson 8" protesting the war in Vietnam. The unnecessary loss of life was ended early due to protests. Other Soldiers were discharged honorably after charges were dropped. He has lived an honorable life without veteran benefits. He needs veteran benefits now after his heart attack, stroke, and diabetes. He should have been honorably discharged. Looking back, it benefited the country to end the war in Vietnam.
3. The applicant provide a photograph of eight Soldiers or the "Fort Jackson 8."
4. A review of the applicant's record shows:
 - a. He enlisted in the Regular Army on 9 December 1968.
 - b. On 22 January 1969, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for, on or about 12 November 1969, he did, without authority absent himself from his unit and did remain so

absent until on or about 8 December 1968. His punishment included forfeiture of \$50.00 per month for two months.

c. Headquarters, 4th Civil Support Team Brigade, Summary Court-Martial Order Number 6, 12 February 1969, shows the applicant was found guilty of violation of Article 91 (Insubordinate Conduct). Specification: In that he did, having received a lawful order from his superior noncommissioned officer, to get in bed, did on or about 2 February 1969 willfully disobey the same.

(1) His sentence, adjudged on 11 February 1969, included reduction to the rank/grade of private (PVT)/E-1, confined at hard labor for one month, and forfeiture of \$73.00.

(2) On 12 February 1969, the sentence was approved and ordered executed, but the confinement at hard labor for one month was suspended for one month, at which time unless the suspension is sooner vacated, the sentence to confinement will be remitted without further action.

d. On 5 March 1969, the applicant accepted NJP under the provisions of Article 15, UCMJ, for, on or about 1 March 1969, he did, having received a lawful order from his superior NCO, to prepare for inspection, did willfully disobey the same. His punishment included forfeiture of \$22.00 per month for one month, 14 days restriction and 14 days extra duty.

e. On 3 May 1969, the applicant voluntarily requested discharge under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10, for the good of the service in lieu of trial by court-martial for an offense punishable by a bad conduct discharge. He understood he may be discharged under other than honorable conditions and furnished an undesirable discharge certificate. He understood he may be deprived of many or all Army benefits, that he be ineligible of many, or all benefits administered by the Veteran's Administration, and that he may be deprived of his rights and benefits as a veteran under both Federal and State law. He also understood that he may expect to encounter substantial prejudice in civilian life by reason of an undesirable discharge. He elected not to submit statements on his own behalf.

f. On 3 May 1969 and 5 May 1969 his immediate commander and intermediate commander recommended disapproval of the applicant's request for discharge for the good of the service.

g. On 15 May 1969, the applicant's brigade commander recommended disapproval of the applicant's request for discharge for the good of the service.

h. On 20 May 1969, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, chapter 10 with an undesirable discharge.

i. The DA form 3082-R (Statement of Medical Condition), shows the applicant acknowledged he underwent a medical examination on 22 May 1969 and there was no change in his medical condition since his last separation exam (not in evidence.)

j. The applicant was discharged from active duty on 23 May 1969. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under the provisions of AR 635-200, in the rank/grade of PVT/E-1, and his service was characterized as under conditions other than honorable. He completed 11 months and 6 days of net active service with lost time from 12 November 1968 to 7 December 1968. He was assigned the separation program number of 246 and the RE code of 3 and 3b. Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows he was awarded the following:

- National Defense Service Medal
- Sharpshoot Marksmanship Qualification Badge with Rifle Bar (M-14)

5. On 6 December 1978 the Army Discharge Review Board notified the applicant they had determined he was properly discharged and his request for a change in the type and nature of his discharge had been denied.

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:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board found insufficient evidence of mitigating factors to overcome the misconduct. The Board acknowledged the applicant involvement in the "Fort Jackson 8" and attributes his actions to opposition

to the Vietnam War, he has not provided any evidence of error or injustice in the original discharge process.

2. The Board determined the applicant's record reflects a pattern of misconduct, including multiple instances of willful disobedience, insubordination, and unauthorized absence. These infractions resulted in nonjudicial punishments and a summary court-martial, culminating in his voluntary request for discharge under Chapter 10, Army Regulation 635-200. The Board recognized the applicant's now referenced health concerns, and a life lived without veteran benefits, however, he has not submitted any post-service achievements, character references, or documentation to mitigate his misconduct or demonstrate rehabilitation. The Board found no compelling basis to determine that the original characterization was improper or inequitable. Furthermore, protesting in uniform remains a serious breach of military discipline and order. Therefore, the Board denied relief.

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.

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 (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. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

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//