

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 February 2025

DOCKET NUMBER: AR20240006319

APPLICANT REQUESTS: in effect, upgrade of his under conditions other than honorable discharge.

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)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- Special Order Number 121

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 the Veterans Service Officer (VSO) talked to him for 25 minutes trying to get some answers from him. The VSO does not think the applicant understands a lot of what happened in service. He kept repeating he was getting ready to go to the airport when his sister got mad and thru his papers and clothes in a river. He could not get on a plane without his orders. He seems to think he was done wrong because he was not as smart as others. He feels he was singled out due to lack of education. He was 16 years old when he left school. When he turned 18, he joined the service to serve his country. The VSO talked with him for an hour and does not have any more information than he found out in the first 15 minutes. His family was in trouble, and he felt he had to go and take care of them.
3. The applicant enlisted in the Regular Army on 6 February 1969. He held military occupational specialty 12B (Combat Engineer). His first duty station was in Germany from 25 July 1969 until 3 August 1970.

4. On 22 December 1969, he received non-judicial punishment (NJP) under article 15 of the Uniform Code of Military Justice (UCMJ) for:
 - On or about 2305 hours, 27 November 1969, he was drunk and disorderly
 - On or about 2305 hours, 27 November 1969, he assaulted Private H.G. by cutting him with a bottle
 - On or about 2305 hours, 27 November 1969, he assaulted Sergeant C.T. by cutting him with a bottle
5. On 9 February 1971, a special court-martial convened and found him guilty of two specifications of absent without leave from on or about 3 August 1970 until on or about 25 August 1970 and from on or about 29 August 1970 until on or about 4 January 1971. He was sentenced to confinement at hard labor for four months and to be reduced to the grade of private/E-1.
6. On 11 February 1971, the convening authority ordered the sentence approved and will be duly executed, but the execution of that portion thereof adjudging confinement at hard labor for four months was suspended for four months, at which time, unless the suspension is sooner vacated, the suspended portion of the sentence will be remitted without further action.
7. He received NJP under article 15 of the UCMJ:
 - On 7 May 1971, for on or about 6 May 1971, unlawfully commit assault and battery on Specialist (SPC) and SPC J.Y. on the body with his fists
 - On 11 May 1971, for on or about 9 May 1971, without authority, absent himself from his place of duty (extra duty)
 - On 13 May 1971, for on or about 13 May 1971, without authority, absent himself from his place of duty (work call formation)
8. DA Form 20 (Enlisted Qualification Record) shows in item 44 (Time Lost Under Section 972, Title 10, U.S.C. and Subsequent to Normal Expiration Term of Service) he was absent without leave (AWOL) from 28 July 1971 until 27 April 1972.
9. DD Form 458 (Charge Sheet) shows court-martial charges were preferred on 11 May 1972, for the specification of being AWOL from 28 July 1971 until 28 April 1972.
10. On 18 May 1972, the applicant voluntarily requested discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He understood that he may request discharge for the good of the service because charges have been preferred against him under the UCMJ, which authorizes the imposition of a bad conduct or dishonorable discharge. He was afforded

the opportunity to consult with counsel. He understood he may be discharged under other than honorable conditions. He also understood:

- He will be deprived of many or all Army benefits
- He may be ineligible for 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 may expect to encounter substantial prejudice in civilian life because of discharge under other than honorable conditions

11. On 24 May 1972, he underwent a mental status evaluation which found his behavior as passive, fully alert, fully oriented, depressed mood, normal thought content, and good memory. He had no significant mental illness, was mentally responsible, able to distinguish right from wrong, able to adhere to the right, and had the mental capacity to understand and participate in board proceedings.

12. He underwent a separation physical examination on 24 May 1972 and was found qualified for separation.

13. His chain of command recommended approval and that an Undesirable Discharge Certificate be issued.

14. The separation authority approved discharge under the provisions of AR 635-200, chapter 10 and directed he receive an Undesirable Discharge Certificate.

15. Accordingly, he was discharged on 21 June 1972 under conditions other than honorable under the provisions of AR 635-200, chapter 10. His DD Form 214 shows he completed 2 years and 19 days net active service this period. He had 476 days lost time from 3 August 1970 – 24 August 1970; 29 August 1970 – 17 January 1971; 28 July 1971 – 27 April 1972; and 15 June 1972 – 21 June 1972.

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

17. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. 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.

18. 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 pattern of misconduct leading to the applicant's separation, some of that misconduct being of a violent nature against others, and a lack of mitigation evidence and/or character evidence for clemency consideration, 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//

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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 (AR) 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. 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.

a. Paragraph 3-7a (1) states 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) states 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. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and 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. 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, 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. 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//