

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 February 2025

DOCKET NUMBER: AR20240006461

APPLICANT REQUESTS: an upgrade of his under 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) in lieu of 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 9 June 1976
- DD Form 215 (Correction to DD Form 215, Certificate of Release or Discharge from Active Duty), 8 June 1983

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 and his friends were out at a bar and were assaulted by a group of guys. They were outnumbered and he stepped in to defend his friends. He was threatened with a broken beer bottle. He left with his friends, but they were followed outside. He was again threatened with a broken beer bottle. This time he grabbed his pistol and fired a warning shot in the air. However, they continued to charge him and his friends with the broken beer bottle, so he defended himself and shot the man. He was told by his lawyers at his trial that it would be ruled as self-defense. He spent three days in jail and was subsequently discharged.
3. He enlisted in the Regular Army on 31 October 1973 for a period of 3 years. He was promoted to the rank/grade of specialist four/E-4 effective 13 January 1975.
4. The applicant accepted nonjudicial punishment (NJP) on 29 December 1975, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), in that at on or about 0750 hours 19 December 1975, at Fort Knox, KY did, without authority, fail to

go at the time prescribed to your appointed place of duty, to wit: morning formation at building 2380, Headquarters and Headquarters Troop, 2d Squadron, 6th Cavalry, Fort Knox, KY in violation of Article 86, UCMJ.

- a. His punishment was reduction to the grade of private first class/E-3 suspended for 60 days; forfeiture of \$61 pay per month for one month; and to perform extra duty for 14 days. He elected to appeal.
- b. He submitted matters in consideration. (Note: His submission was not available for review). His appeal was denied by the imposing authority on 4 February 1976.
5. The applicant accepted NJP on 24 January 1976, under the provisions of Article 15 of the UCMJ, in that at on or about 1230 hours 8 January 1976, at Fort Knox, KY did, without authority, fail to go at the time prescribed to your appointed place of duty, to wit: Squadron Maintenance, 2d Squadron, 6th Cavalry, Fort Knox, KY in violation of Article 86, UCMJ. His punishment was forfeiture of \$61 pay per month for one month; perform extra duty for 14 days; and restriction to the Troop area, place of duty, and Squadron Chapel for 14 days. His reduction to the grade of private first class suspension was vacated. He elected not to appeal.
6. DA Form 4187 (Personnel Action), on 17 February 1976 shows his duty status changed from "present for duty" to "absent without leave (AWOL)" effective 13 February 1976.
7. DA Form 4187, dated 15 March 1976, shows his duty status changed from "AWOL" to "dropped from unit rolls (DFR)" effective 13 March 1976.
8. DA Form 4187, on 19 April 1976, shows he was apprehended in Lexington, KY on 3 April 1976 and was held at the Metro County Jail until 9 April 10976 at which time he was returned to military control at Fort Knox, KY. Thereby changing his duty status from "DFR" to attached to his original unit at Fort Knox effective 9 April 1976.
9. The DD Form 458 (Charge Sheet), 9 April 1976, shows he was charged with one specification of violation of Article 86, in that he did at on or about 0730 hours 13 February 1976, without authority, absent himself for his unit, to wit: Headquarters and Headquarters Troop, 2d Squadron, 6th Cavalry located at Fort Knox, KY and did remain so absent until on or about 8 April 1976.
10. After consulting with legal counsel on 16 April 1976, the applicant voluntarily requested discharge for the good of the service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), 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.

c. He elected to submit a statement in his own behalf. He noted his service record and his regret for his misconduct. He pleaded for compassion and requested he received a general characterization of discharge.

11. 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 16 April 1976.

12. The approval authority approved the applicant's request for discharge on 3 June 1976, in lieu of trial by court-martial, and directed that he be reduced to the lowest enlisted grade and issued an undesirable discharge certificate.

13. The applicant was discharged on 9 June 1976. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:

- item 6a (Grade, Rate, or Rank) – Private
- item 6b (Pay Grade) – E-1
- item 9e (Character of Service) – Under Other Than Honorable Conditions
- item 18a (Net Active Service This Period) – 2 years, 5 months, and 13 days
- item 12c (Total Active Service) – 2 years, 5 months, 13 days
- item 27 (Remarks), contains the entries:
  - 56 days lost under 10 USC 972 [Title 10, U.S. Code, Section]: 13 February 1976 – 8 April 1976
  - Conduct triable by court-martial
  - SPD [Separation Program Designator] – KFS
  - Chapter 10, Army Regulation 635-200

- RE-4 [Reenlistment Code]
- Paragraph 2-22, Army Regulation 601-200 [Army Retention Program] applies
- Army Regulation 600-37 [Unfavorable Information] complied with

14. His records contain a DD Form 215 (Correction to DD Form 214), dated 8 June 1983 that corrected his DD Form 214 by:

- adding to item 10 (Reenlistment Code) – RE-3, RE-3B, RE-3C
- item 27 –
  - Deleted: RE-4; Paragraph 2-22 Army Regulation 601-200 applies; Army Regulation 600-37 complied with
  - Added:
    - Chapter 4, Army Regulation 600-200 [Enlisted Personnel Management System] and Table 4-1
    - Army Regulation 601-210 [Qualifications and Procedures for Processing Applicants for Enlistment and Reenlistment in the Regular Army] apply
    - Army Regulation 600-37 complied with

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

#### BOARD DISCUSSION:

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 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 an offense 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 found no error or injustice in the separation proceedings and designated characterization of service. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1    Mbr 2    Mbr 3

|     |     |     |                      |
|-----|-----|-----|----------------------|
| :   | :   | :   | GRANT FULL RELIEF    |
| :   | :   | :   | GRANT PARTIAL RELIEF |
| :   | :   | :   | GRANT FORMAL HEARING |
| :XX | :XX | :XX | 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 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//