

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 March 2025

DOCKET NUMBER: AR20240006857

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable.

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

- DD Form 293 (Application for the Review of Discharge)
- Character reference letter from P_M_
- Veterans Affairs Form 21-0972 (Alternate Signer Certification)
- Marriage Certificate
- Social Security Card
- Certificate of Live Birth
- Spouse's Certificate of Death
- DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge)

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 acknowledges that he might have done some dishonorable things in his past, however he has stayed out of trouble since then. He has managed to keep a long term job, but now he is a widower on social security. He fell on hard times with the passing of his wife, he lives on the street. He seeks help with housing.
3. On 16 May 1969, the applicant enlisted in the Regular Army, for 3 years. The highest grade he attained was E-4.
4. On 10 May 1971, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military control on 17 May 1971.
5. On 18 May 1971, the applicant was reported as AWOL a second time, and remained absent until he returned to military control on 23 May 1971.

6. On 21 June 1971, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for going AWOL on two occasions; and absenting himself from morning formation, on or about 18 June 1971. His punishment included reduction to E-3.

7. Before a general court-martial on 16 November 1971, at Seoul, Korea, the applicant was found guilty of three specifications of willfully and wrongfully destroying personal property of a value of more than \$100.00, on or about 9 July 1971; one specification of conspiring with other individuals in the willful and wrongful destruction of private property, on or about 9 July 1971; and three specifications of conducting himself in a disorderly manner in a public place, on or about 9 July 1971.

8. The court sentenced him to a Bad Conduct Discharge (BCD), forfeiture of all pay and allowances, and confinement at hard labor for three years. The sentence was approved on 22 January 1972; however, only so much of the sentence as provides for a BCD, forfeiture of all pay and allowances, and confinement at hard labor for two years was approved. The record of trial was forwarded for appellate review.

9. The U.S. Army Court of Military Review affirmed the findings and sentence on 2 November 1972.

10. General Court-Martial Order Number 176, issued by Headquarters, U.S. Disciplinary Barracks, Fort Leavenworth, KS on 16 February 1973, noted the applicant's sentence had been affirmed and ordered the sentence to be duly executed.

11. The applicant was discharged on 28 February 1973. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 11-2, by reason of court-martial. His service was characterized as UOTHC. He was credited with 2 years, 3 months, and 23 days of net active service this period with 318 days of time lost.

12. The applicant provides:

a. A character reference letter from his daughter that attests to his need for housing and health benefits.

b. Various documents detailing his family dynamics to include his spouse's death certificate.

13. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency 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, some including damaging others personal property, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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//

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 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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. 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 11, provided that a member would be given a BCD pursuant only to an approved sentence of a general court-martial or special court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

3. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, 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.

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.

//NOTHING FOLLOWS//