

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 January 2025

DOCKET NUMBER: AR20240007090

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

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record), 29 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 his second lieutenant had it in for him because he could not do a pushup without pain; he wanted to have his arm rebroken. He is requesting an honorable discharge and to have his records reflect he is a Vietnam Era Veteran, as he thanks God he was not in Vietnam however is a Vietnam Era Veteran.
3. The applicant enlisted in the Regular Army on 3 January 1973 for a 3-year period. He was awarded military occupational specialty 63B (Wheel Vehicle Mechanic). The highest rank he attained was private/E-2.
4. The applicant received nonjudicial punishment (NJP) on four occasions under the provisions of Article 15 of the Uniform Code of Military Justice for the following:
  - a. On 20 February 1973, for without authority absenting himself from his unit on or about 17 February 1973 and remaining absent until on or about 19 February 1973. His punishment imposed was forfeiture of \$71.00 per month for one month, restriction for 10 days, and extra duty for 10 days.
  - b. On 19 June 1973, for disobeying a lawful order received from his superior commissioned officer on or about 18 June 1973 to get a haircut, and for disobeying a lawful order received from his superior commissioned officer on or about 19 June 1973

to shave. His punishment imposed was forfeiture of \$100.00 for one month, \$50.00 suspended for thirty days.

c. On 5 July 1973, for violating a general regulation by being off the Camp Hovey Compound between 0001 hours and 1000 hours on or about 3 July 1973. His punishment imposed was forfeiture of \$50.00 per month for one month, restriction for 7 days, and extra duty for 7 days.

d. On 1 August 1973, for failing to go to his prescribed appointment place of duty on or about 31 July 1973. His punishment imposed was forfeiture of \$25.00 per month for two-month, second month suspended for 21 days, restriction for 7 days, and extra duty for 7 days.

5. On 25 August 1973, the applicant's immediate commander notified him of the intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13 (Separation for Unfitness or Unsuitability).

6. The applicant's immediate commander formally recommended him for discharge on 25 August 1973. He noted the applicant's frequent incidents of a discreditable nature with civil or military authorities and his established pattern for shirking and stated the applicant had been counseled numerous times with no sign of any change in his misconduct. He was a submarginal soldier who was continually in trouble and was not interested in doing his job or soldiering in any way.

7. On 29 October 1973 the applicant consulted with counsel and was advised of the basis for the contemplated action to separate him and of the rights available to him. He waived consideration, a personal appearance, and representing counsel by an administrative separation board and understood he may encounter prejudice in civilian life. Additionally, he elected to not submit a statement in his behalf.

8. The applicant's intermediate commander's recommended approval of the separation action under the provisions of AR 635-200, Chapter 13, for unfitness.

9. On 31 October 1973, the separation authority approved the recommended discharge for unfitness and directed the issuance of a DD Form 257A (General Discharge Certificate).

10. The applicant was discharged on 23 November 1973, under the provisions of AR 635-200, in the grade of E-2. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows his service was characterized as under honorable conditions. He was credited with 10 months and 19 days of total active service with 2 days lost time from 17 February 1973 to 18 February 1973. He was

awarded or authorized the National Defense Service Medal, Armed Forces Expeditionary Medal, and Expert Badge (Rifle).

11. AR 635-200, in effect at the time, set forth the basic authority for separation of enlisted personnel for unfitness or unsuitability. Chapter 13, paragraph 13-5a(1), provided for discharge due to unfitness because of frequent incidents of a discreditable nature with civil or military authorities.

12. AR 635-5 (Separation Documents), in effect at the time, provided the instructions for completing the DD Form 214. The regulation did not provide for an entry denoting the era in which a Soldier served.

13. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, his record of service, the frequency and nature of his misconduct, the reason for his separation and the character of service he received upon discharge. The Board found no evidence of mitigating factors for the misconduct and other than his statement related to his chain of command, the applicant provided none. The applicant did not provide evidence of post-service achievements or reference letters for the Board to consider in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character 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
■	■	■	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.

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), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.
  - a. An honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.
  - b. A general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.
  - c. Chapter 13 provided procedure and guidance for eliminating enlisted personnel found to be unfit or unsuitable for further military service.

3. 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//