

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 March 2025

DOCKET NUMBER: AR20240007732

APPLICANT REQUESTS:

- in effect, an upgrade of his under other than honorable conditions discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Standard Form 180 (Request Pertaining to Military Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- National Personnel Records Center Letter, 19 December 2022
- Four Characterization Letters

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 is requesting health benefits. He was young and did not know what to do. His DD Form 149 shows he selected other mental health, and his request is related to wars or contingency operations.
3. The applicant provides four-character witness statements, that show in part:
 - a. Three letters' issued by his nephews that state the [applicant] was a father figure, and life would have been harder without him being around. The applicant lived with them and taught them how to become men. He is an engaged member of his church and community and has compassion for the lonely and less fortunate.

b. His sister M____ K____ states the applicant went into the Army at 17 years old, during the Vietnam War and he was stationed in Germany. While in Germany he did what most young Soldiers do under the stress of war and began using drugs. He was given drugs by the older Soldiers so he would not be scared in the event he got orders to go to Vietnam. The applicant tried to go back to school but was unable to concentrate. He has worked numerous jobs. The applicant was administered medication to stop him from using heroine. He needs to be an inpatient in order to survive this illness.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 30 March 1972.

b. His DA Form 20 (Enlisted Qualification Record) shows the applicant served in Germany from 24 August 1972 to 23 March 1974.

c. A DD Form 458 (Charge Sheet) shows court martial charges were preferred on the applicant on 14 March 1973 for four specifications of failure to go to his appointed place of duty, one specification of being absent without leave, one specification of disrespect toward a superior commissioned officer, six specifications of failure to obey a lawful order from a superior commissioned officer, and two specifications of failure to obey a lawful order from a superior noncommissioned officer.

d. A second DD Form 458 shows additional court martial charges were preferred on the applicant on 28 March 1973 for violating a lawful general regulation by operating a vehicle without a valid operator's permit, resisting being lawfully apprehended, and stealing a motor vehicle of a value of about \$100.00 the property of First Sergeant G____.

e. On 2 April 1973, the applicant consulted with legal counsel and requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- he was making the request of his own free will
- maximum punishment
- he was guilty of at least one or more of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other conditions other than honorable
- he would be deprived of many or all Army benefits, he may be ineligible for many, or all benefits administered by the Veterans Administration,

- 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
- he elected not to submit a statement in support of his request

f. On 23 May 1973, the separation authority approved the applicant's request for discharge for the good of the service. He would be issued an Undesirable Discharge Certificate and reduced to the lowest enlisted grade.

g. On 13 June 1973, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 1 year, 2 months, and 10 days of active service with 4 days of lost time. It also shows he was awarded or authorized the Marksman Marksmanship Qualification Badge with Rifle Bar (M-16) and the National Defense Service Medal.

5. On 17 January 1978, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for a change in the character and/or reason of his discharge.

6. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

7. 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:

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 her characterization of service. Upon review of the applicant's request and available military record, the Board noted the applicant's submitted character witness statements from family members attesting to his positive role in their lives, his involvement in his church, and his compassion for others. The Board acknowledged these post-service accomplishments and the supportive testimony provided. The Board also considered his sister's statement describing his youth,

exposure to drugs while stationed in Germany, and subsequent struggles with substance abuse.

2. Despite these submissions, the Board found insufficient evidence of in-service mitigating factors to overcome the serious and repeated misconduct. Court-martial charges were preferred against him for multiple specifications of failure to report, disobedience of lawful orders, disrespect toward a superior officer, unauthorized vehicle operation, resisting apprehension, and theft of a motor vehicle. The Board determined the applicant never served in Vietnam, but rather in Germany during the final stages of U.S. involvement in the conflict. The applicant's misconduct occurred in a peacetime environment and was not mitigated by combat stressors. While his post-service conduct and family support are commendable, they do not outweigh the seriousness of his offenses or establish error or injustice in the original discharge proceedings. Based on a preponderance of the evidence, the Board determined the characterization of service remains appropriate. Therefore, relief is denied.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. 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.

b. 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. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service, in lieu of court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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/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.

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 based on 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.

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//