

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 January 2025

DOCKET NUMBER: AR20240007889

APPLICANT REQUESTS:

- Reconsideration of his previous request for an upgrade of his under other than honorable conditions discharge to under honorable conditions (General)
- 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)
- Self-Authored Statement

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) AC83-09348 on 14 September 1983.

2. The applicant states he made a mistake 50 years ago. He went absent without leave (AWOL) for 71 days. For the last 50 years he lived with his mistake. He believes the punishment should fit the crime and the characterization of service should be upgraded. He is proud of his service and ashamed of his behavior during his later time in service. He enlisted to be able to help his mom who raised him. He worked 30 years for the Department of Veterans Affairs (VA) and felt that he was giving back to help the other veterans. He never had any disciplinary actions against him.

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

a. He enlisted in the Regular Army on 31 October 1972.

b. On 20 February 1974, court-martial charges were preferred against the applicant for being AWOL, without authority, from his unit at Fort Sill, Oklahoma from 3 December 1973 to 12 February 1974.

c. The applicant's election of rights is unavailable in his service record. However, on 26 February 1974, a statement written by the applicant to the Commanding General of Fort Sill, Oklahoma states:

(1) He came into the Army from Louisiana hoping to find a[n] enjoyable new way of life, though he was basing this on what he was told from his recruiter. He came into the Army with hopes of finishing his high school education, which he did in basic training.

(2) After completing basic training at Fort Polk, Louisiana, he came to Fort Sill where he was awarded his military occupational specialty. He had problems elsewhere and he hopes to find a better way of life living the land of farming for his food and working for his self with nature instead of working against other human beings.

d. On 8 March 1974, consistent with his immediate commander's recommendation, the separation authority approved the applicant's request for discharge for the good of the service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. The applicant would be furnished a DD Form 258a (Undesirable Discharge Certificate) and reduced to private/E-1.

e. On 13 March 1974, he was discharged accordingly. His DD Form 214 (Armed Forces Report of the United States Report of Transfer or Discharge), as amended by his DD Form 215 (Correction to DD Form 214) shows he completed 1 year, 1 month, and 6 days of active service. It also shows in:

- item 11c (Reason and Authority): Chapter 10, Army Regulation 635-200, separation program designator (SPD) 246
- item 12a (Character of Service): under other than honorable conditions
- item 12b (Type of Certificate Issued): DD Form 258a [Undesirable Discharge Certificate]
- item 24 (Decorations, Medals Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized): National Defense Service Medal and Marksman Marksmanship Qualification Badge with Rifle Bar
- item 30 (Remarks): Days Lost 10 U.S. Code 972: 71 days

f. The applicant petitioned the Army Discharge Review Board (ADRB) for a review of his characterization of service. On 18 June 1982, the applicant was notified by the ADRB his request for a change in the type and nature of his discharge has been denied.

g. The applicant petitioned the ABCMR for a review of his characterization of service. On 14 September 1983, the applicant was notified by the ABCMR his request was denied.

4. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

5. A Soldier who has committed an offense or offenses, the punishment for which under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial.

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 his characterization of service. One potential outcome was to grant relief with upgrade to general based on the applicant's post service of 30 years of employment at the Department of Veteran Affairs.

2. However, upon review of the applicant's petition and available military records the Board determined that the seriousness of the misconduct, the lack of compelling new evidence, and the absence of corroborating character references do not warrant a change in the characterization of service. The Board acknowledged the applicant's long-standing 30 years of federal service and his expression of regret, it also noted the absence of external letters of recommendation or additional supporting documentation. The Board found the applicant has not presented sufficient evidence to overcome the misconduct of 71 days AWOL or demonstrate an error or injustice in the original discharge decision. Therefore, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AC83-09348 on 14 September 1983.

X //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. 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. Paragraph 1-13a (Honorable Discharge) states an honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member’s current enlistment or period of obligated service with due consideration for the member’s age, length of service, grade, and general aptitude.
  - b. Paragraph 1-13b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
  - c. Chapter 10 (Discharge for the Good of the Service) states a member who has committed an offense or offenses, the punishment for any of which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service.
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. 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. 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//