

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF [REDACTED]

BOARD DATE: 24 February 2025

DOCKET NUMBER: AR20240007904

APPLICANT REQUESTS: in effect, upgrade of his undesirable discharge.

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

- DD Form 149 (Application for Correction of Military Record), 1 April 2024
- Applicant statement, undated
- DD Form 214 (Report of Separation from Active Duty), 2 March 1976
- 8 pages of medical documents, 2016

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 71 years of age and had a stroke 7 years ago. He needs disability because he is unable to move around.
3. The applicant provides 8 pages of medical documents showing he was discharged from the hospital in stable condition in 2016 following a history of acute chronic systolic congestive heart failure, hypertension, chronic kidney disease, cardiomyopathy, and dyslipidemia.
4. A review of the applicant's service records show the following:
 - a. On 12 July 1972, he enlisted in the Regular Army for 3 years at age 19. On 21 September 1972 he was promoted to private 2/E-2.
 - b. On 3 March 1973, he changed station to Germany, and he was subsequently assigned to Company B, 1st Battalion, 87th Infantry.
 - c. On 22 June 1973, he was reported absent without leave (AWOL) from his unit.

d. On 21 July 1973, he was dropped from the rolls (DFR) of his unit.

e. On 23 July 1973, his company commander noted he spoke to the applicant prior to his departure on leave regarding domestic problems. While he was in an AWOL status, the applicant's wife responded to the applicant's company commander's letter to her on 16 July 1973, stating the applicant was attempting to be reassigned.

f. On 30 January 1976, his status changed from AWOL to present for duty (PDY) and then placed in confinement on the same day.

g. On 2 February, his status changed from confined to PDY.

h. On the same date court-martial charges were preferred against him. A DD Form 458 (Charge Sheet) shows he was charged with one specification of AWOL from his unit, Company B, 1st Battalion, 87th Infantry, Baumholder, Germany, on or about 22 June 1973 until on or about 29 January 1976.

i. After consulting with legal counsel on 3 February 1976, he voluntarily requested discharge for the good of the service in lieu of trial by court-martial, under the provisions of Chapter 10, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel). In doing so, he acknowledged that the charges preferred against him under the Uniform Code of Military Justice (UCMJ), authorized the imposition of a bad conduct discharge or dishonorable discharge. He further acknowledged:

- he had not been subjected to coercion with respect to his request for discharge
- he had been advised of the implications that were attached to it
- by submitting the request, he was acknowledging he was guilty of the charge(s) against him or of (a) lesser included offense(s) therein contained which also authorized imposition of a bad conduct or dishonorable discharge
- he could be discharged under other than honorable conditions, furnished an undesirable certificate, and he could be ineligible for many, or all benefits administered by the Department of Veterans Affairs (VA)
- he could be deprived of many, or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he could expect to encounter substantial prejudice in civilian life by reason of an under other than honorable conditions discharge
- he was advised he could submit any statements he desired in his own behalf, and elected to do so

j. On the same date he provided a written statement indicating he wanted out of the Army, and he wanted to be with his family.

k. On 3 February 1976, he underwent a medical examination and gave a report of medical history in connection with Chapter 10 proceedings. The examining physician noted he was in good health and the applicant indicated with his signature that he was in good health. The examining physician noted he was qualified for chapter proceedings.

l. On the same date, the Commanding Officer, Personnel Control Facility, Headquarters Command, XVIII Airborne Corps, Fort Bragg, recommended approval of his request for discharge with issuance of an undesirable discharge; and on 11 February 1976 the intermediate commander also recommended approval of his request.

m. On 12 February 1976, his status changed to excess leave.

n. On 17 February 1976, the Staff Judge Advocate recommended approval of his request with an undesirable discharge.

o. On 19 February 1976, the separation authority approved his discharge for the Good of the Service with issuance of an Undesirable Discharge Certificate and directed he be reduced to the lowest rank.

p. On 2 March 1976, he was discharged. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10 with a separation program designator code KFS and reenlistment code 4. He completed 11 months of net active service this period with 708 days' time lost and 21 days' excess leave. He was awarded the National Defense Service Medal and Parachutist Badge.

5. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

6. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

7. The Board should consider the applicant's overall military service and statement in accordance with the published equity, injustice, or clemency determination 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. One potential outcome discussed was to grant relief by upgrading the applicant's characterization of service based upon the passage of time, the current health conditions, and the guidance on clemency. However, based upon the relatively short term of honorable service completed prior to the lengthy AWOL offense leading to the applicant's separation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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 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//

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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. 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) in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

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 10 provided that a member who had committed an offense or offenses for which, under the UCMJ and the Manual for Court Martial, 1969 (Revised Edition), the authorized sentence included a punitive discharge, could submit a request for discharge for the good of the service for conduct triable by court-martial. The request could be submitted at any time after charges were preferred. Although an honorable or general discharge could be directed, an Undesirable Discharge Certificate would normally be furnished to an individual who was discharged for the good of the service.

4. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "KFS" corresponded to "For the Good of the Service," and the authority, Army Regulation 635-200, Chapter 10.

5. 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-

marital; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice. 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. 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//