

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 February 2025

DOCKET NUMBER: AR20240008067

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant's statement

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:

a. He was 17 years of age and married when he enlisted in the Army. He was still a kid. He is asking for an honorable discharge. He was a good Soldier, just young and dealing with a lot being married so young. He was running behind a cheating wife, and it had a lot to do with his performance at work. He is 62 years of age now and that was his worst mistake. He was not mentally prepared to be married and trying to be a good Soldier.

b. All four years in high school he was in the Junior Reserve Officers' Training Corps. His planed retire at the age of 39. He was not disrespectful and obeyed orders. He was missing work trying to save his marriage and went to jail for bad checks that his wife was writing. He was young and handled everything wrong trying to hold on to his marriage and wife.

3. A review of the applicant's military service records show:

a. He enlisted in the Regular Army for three years on 12 June 1979. His DD Form 4 (Enlistment or Reenlistment Agreement – Armed Forces of the United States) shows his

date of birth as 10 September 1961. He completed training requirements and was awarded his military occupational specialty. The highest rank/grade he held was private first class/E-3.

b. DA Forms 4187 (Personnel Action) show:

- 5 November 1979, the applicant's duty status was changed to confinement with civil authorities; he was apprehended and taken to Muscogee County Jail, Columbus, GA, pending disposition of charges
- 8 November 1979, his duty status was changed to present for duty (PDY); charges were dismissed without trial
- 7 January 1980, his duty status was changed to confinement civilian authorities; he was apprehended by civilian authorities for violation of probation and appeared before court and sentenced to confinement of 60 days; he was in confinement at Muscogee County Jail, Columbus, GA
- 18 January 1980, his duty status was changed to PDY; he paid a fine and was released
- 7 February 1980, his duty status was changed to absent without leave (AWOL)
- 11 February 1980, his duty status was changed to PDY (absent 5 days)
- 16 April 1981, his duty status was changed to AWOL
- 20 April 1981, he surrendered to his unit and his duty status was changed to PDY

c. On 22 April 1981, the applicant accepted Nonjudicial Punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for being AWOL from on or about 16 to 20 April 1981. His punishment consisted of reduction to the grade of E-2, forfeiture of \$130.00 (suspended for 30 days), and 14 days extra duty and restriction. He did not appeal. The unexecuted portion of punishment of 14 days extra duty and restriction was remitted on 29 April 1981.

d. On 2 May 1981, DA Form 4187 shows the applicant's duty was changed to AWOL.

e. On 11 May 1981, the suspension of the punishment of forfeiture of \$130.00, imposed on 22 April 1981, against the applicant was vacated.

f. On 18 May 1981, DA Forms 4187 show the applicant surrendered to his unit, his duty status was changed from AWOL to PDY, and he was placed in pre-trial confinement.

g. On 29 May 1981, the applicant was arraigned and tried by a special court-martial for being AWOL from on or about 2 to 18 May 1981. He pled guilty and was found guilty

of the charge. He was sentenced to be reduced to the grade of private/E-1, to forfeit \$75.00 per month for 3 months and to be confined at hard labor for 3 months. (No previous convictions considered.)

h. DA Forms 4187 show:

- 13 August 1981, the applicant's duty status was changed from confined military authorities to PDY
- 6 January 1982, his duty status was changed to AWOL
- 7 January 1982, his duty status was changed to PDY

i. On 13 January 1982, the applicant accepted NJP under the provisions of Article 15 of the UCMJ for being AWOL from 6 to 7 January 1982. His punishment consisted of 14 days extra duty for 2 hours a day (suspended for 90 days). He did not appeal.

j. DA Forms 4187 show his duty status was changed from ordinary leave to AWOL on 20 February 1982 and AWOL to PDY on 4 March 1982.

k. On 11 March 1982, the suspension of the punishment of 14 days extra duty imposed on 13 January 1982 against the applicant was vacated.

l. On 23 March 1982, he accepted NJP under the provisions of Article 15 of the UCMJ for being AWOL from on or about 20 February to 4 March 1982 and failing to go to his appointed place of duty on three occasions. His punishment consisted of restriction and extra duty for 39 days. He did not appeal.

m. His record contains multiple counseling which show he was counseled for indebtedness and failing to be at his appointed place of duty on multiple occasions.

n. On 31 March 1982, the applicant's immediate commander notified him that he was recommending him for separation from the Army under the provisions of paragraph 14-33b(1), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), for reasons of misconduct. The reason for the action was based on an attached letter. The immediate commander also informed the applicant of his rights.

o. On 1 April 1982:

(1) The applicant was medically and psychiatrically cleared for administrative separation. He was found to be mentally responsible, able to distinguish right from wrong and able to adhere to the right. He had the mental capacity to understand and participate in board proceedings.

(2) He requested consideration of his case by a board of officers and a personal appearance before a board of officers. He elected not to submit statements in his own behalf and requested representation by counsel. The applicant was advised by counsel of the basis for his contemplated separation and its effects, the rights available to him and the effect of a waiver of his rights.

(3) The immediate commander formally recommended the applicant for discharge under the provisions of AR 635-200, paragraph 14-33b(1) for reasons of misconduct (frequent acts of a discreditable nature). The discharge was recommended because of the habits and traits of character manifested by repeated commission of offenses. The applicant had repeatedly shown a complete lack of interest in becoming a satisfactory Soldier and his conduct indicated that he would never serve any useful purpose while in the Service. His continued retention would adversely affect the military mission. No other disposition was considered appropriate.

(4) The intermediate commanders recommended approval and to waive counseling and rehabilitative transfer requirements.

p. On 22 April 1982, the Staff Judge Advocate reviewed the case and found it to be legally sufficient for discharge action, and the General Court-Martial Convening Authority waived the requirement for rehabilitative transfer and directed a Board of Officers convene to hear the applicant's case.

q. On 17 May 1982, the Board of Officers adjourned and found the applicant was undesirable for further retention in the military service because of misconduct for frequent incidents of a discreditable nature. His rehabilitation was not deemed possible. In view of the findings, the board recommended the applicant be discharged from the service because of misconduct with issuance of an Under Other Than Honorable Conditions Discharge Certificate.

r. On 4 June 1982, the separation authority approved the recommendation of the Board of Officers and directed the applicant be issued an Under Other Than Honorable Conditions Discharge Certificate and be reduced to the rank/grade of private/E-1.

s. On 11 June 1982, the applicant was discharged from Army under the provisions of AR 635-200, paragraph 14-33b(1), for misconduct – frequent incidents of a discreditable nature with civil or military authorities. He completed 2 years, 7 months, and 23 days net active service. He was not awarded a personal award/decoration. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:

- item 4a (Grade, Rate or Rank) – PVT
- item 4b (Pay Grade) – E-1
- item 24 (Character of Service) – Under Other Than Honorable Conditions

- item 29 (Dates of Time Lost During This Period) –
 - 6 to 7 November 1979
 - 7 to 17 January 1980
 - 7 to 10 February 1980
 - 16 to 19 April 1981
 - 2 May to 12 August 1981
 - 6 January 1982
 - 20 February to 3 March 1982

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. Upon review of the applicant's petition and available military records, the Board acknowledged the applicant's youth and personal circumstances, however, found insufficient basis to warrant an upgrade of his discharge.

2. The applicant's military record documents a pattern of misconduct, including multiple periods of absence without leave (AWOL), confinement by civil and military authorities, repeated nonjudicial punishments, and a conviction by special court-martial. These offenses occurred over an extended period and were not isolated incidents. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. Furthermore, the Board noted the applicant has not demonstrated that his discharge was improper or inequitable at the time it was issued. Therefore, the Board found no error or injustice and denied the request for upgrade of his UOTHC discharge.

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.

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 (AR) 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, it states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR will decide cases based on the evidence of record. It is not an investigative agency.
3. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel for the convenience of the government. Paragraph 14-33b(1) states, in pertinent part, that members involved in frequent incidents of a discreditable nature with civil or military authorities were subject to separation for misconduct. A discharge under other than honorable conditions is normally considered appropriate. In pertinent part:

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 (emphasis added) or is otherwise so meritorious that any other characterization would be clearly inappropriate. Whenever there is doubt, it is to be resolved in favor of the individual.

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. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

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.

a. 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.

b. 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, 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//