

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 March 2025

DOCKET NUMBER: AR20240008099

APPLICANT REQUESTS: an upgrade of his character of service to under honorable conditions (general)

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- letter, National Personnel Records Center, 23 April 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 he was born with Amblyopia (lazy eye), for which he received treatment as a child. The vision in his right eye was hazy and out of focus; it was very obvious.

a. He wanted to serve in the military and was accepted into the Army; he was proud to be a Soldier. He was placed into a Field Artillery Military Occupational Specialty (MOS) 13A10, where he performed well.

b. His MOS changed to Air Defense, "R-6 Redeye gunner." The "Redeye" can only be fired using the right eye. He told his instructors he could not see; his instructors told him the Army does not make mistakes. He faked his way through training with a lot of cheating. The lie he was living caused him to suffer from mental anguish and psychological problems. He started smoking a lot of marijuana to deal with his troubles; he got into trouble, but it was the only way he knew how to deal with his problems.

c. He is now an old man, who is almost blind, and he lives in shame because of his bad discharge. He wonders how the Army could not see his very deformed right eye

and not know he could not fire a Redeye missile. He asks the Board to help him so he no longer has to live in shame, and he can be proud of his service again.

3. The applicant enlisted in the Regular Army on 29 June 1973.

4. His DA Form 20 (Enlisted Qualification Record) shows:

a. Block 17 (Physical Status) - PULHES of 111121, meaning he had a permanent level 2 physical profile for his eyes.

b. Block 22 (MOS) -

- ~~Primary MOS (PMOS) 13A10R6 - Field Artillery Basic - 19 October 1973~~
- PMOS 13B10R6 - Field Artillery Crewman - 26 March 1974

c. Block 27 (Military Education) -

- Field Artillery Basic Course - MOS 13A10 - 7 weeks, 1973
- Redeye Gunners Course - MOS 13A10R6 - 3 weeks, 1973

d. Block 42 (Remarks) -

- (Block 44) - the applicant was in the hands of civil authorities, in the City jail, serving pretrial confinement on 21 August 1974
- On 22 August 1974, the applicant was released from confinement, found guilty by a civil authority, fined \$250.00, and released

e. Block 44 (Time Lost...) -

- 21 August 1974 - 21 August 1974, (1 day) Imprisonment
- 8 September 1974 - 19 November 1974 (73 days) Imprisonment

5. The applicant's separation packet and allied documents show:

a. On 2 April 1974, the applicant was pulled over by a local law enforcement officer for exceeding the speed limit. The officer noticed the smell of marijuana coming from the vehicle and a subsequent search revealed one plastic bag of about one ounce of suspected marijuana.

b. On 17 May 1974, the applicant appeared in court, he was found guilty of possession of drugs of abuse, and he was fined \$250.00.

c. On 8 September 1974, at a School, the applicant and others entered the school by breaking a window with a tire tool and stole a tape player, a football, and two boxes of ice cream sandwiches valued at over \$50.00.

d. On 15 November 1974, a criminal court sentenced the applicant to be confined at hard labor upon the public works for the offense of housebreaking and larceny. The court deferred the sentence until the Army informed the court of the applicant's status.

e. On 26 November 1974, the applicant's chain of command initiated administrative separation under the provisions of Army Regulation 635-206 (Personnel Separations - Discharge Misconduct (Fraudulent Entry, Conviction by Civil Court, and Absence without Leave)). The applicant was confined at the county jail.

f. The applicant elected not to appeal his civil conviction.

6. Special Orders number 57, dated 24 March 1975 reduced the applicant to the rank/grade of private (PVT)/E-1 as a result of an approved undesirable discharge.

7. The applicant was discharged on 27 March 1975, under the provisions of Army Regulation 635-206. His DD Form 214 confirms his service was characterized as under other than honorable conditions, with separation program designator "JKB." He was credited with 1 year, 6 months, and 16 days of net active service with 74 days of lost time from 21 August 1974 and 8 September-19 November 1974.

8. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting a discharge upgrade

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration

shows he entered the Regular Army on 29 June 1973 and was discharged under other than honorable conditions on 27 March 1975 under the provisions provided in AR 635-206, Discharge - Misconduct (Fraudulent Entry, Conviction By Civil Court, and Absence Without Leave or Desertion).

d. In 1974, the applicant was arrested by civil authorities for "Possession of drugs of abuse."

e. This appears to be the basis for his discharge from the Army

f. No medical documentation was submitted with the application and his period of service predates AHLTA. The applicant does not have a record in JLV.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

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, the medical advisory opinion, 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. The Board noted in 1974, the applicant was arrested by civil authorities for abuse and possession of drugs. Upon review of the applicant's petition, available military record and medical review, the Board concurred with the advisory opinion finding no medical documentation was submitted with the application and his period of service predates AHLTA and he does not have a record in JLV. The Board found insufficient evidence of in-service mitigating factors for the misconduct and the applicant provided no evidence of post-service achievements or letters of support to weigh a clemency determination. Based upon a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

2. Consideration was given to the Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

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 635-206 (Personnel Separations - Enlisted Personnel)) set forth the basic authority for the separation of enlisted personnel. This regulation provides:
 - 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.
3. Army Regulation 635-206 (Personnel Separations - Discharge Misconduct (Fraudulent Entry, Conviction by Civil Court, and Absence without Leave)), in effect at the time, provided the authority for the administrative separation or retention of enlisted personnel who had committed an act and or acts of misconduct. Section VI of that regulation prescribed the standards and procedures for processing cases of individuals who, during their current term of active military service, had been convicted by a civil court. An undesirable (under other than honorable conditions) discharge was normally considered appropriate for members separating under this provision of the regulation; however, the separation authority could issue an honorable or a general discharge if warranted by the member's overall record of 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/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, 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.

5. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//