

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 February 2025

DOCKET NUMBER: AR20240008307

APPLICANT REQUESTS:

- an upgrade of Character of Service to reflect “General Under Honorable Conditions” rather than “Under Other Than Honorable Conditions”
- personal appearance

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

DD Form 149 (Application for Correction of Military Record).

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 in pertinent part that he did not understand the consequences of his actions when he was discharged from the military. At the time, his mother had passed away and he lacked the emotional stability to make rational decisions. Currently, the applicant is 72 years old battling with bladder cancer and the loss of his vision in one eye. He does not have enough financial income or medical insurance to cover the needed healthcare. Upgrading his character of service would allow him to obtain benefits from the 2 years of active-duty service that he performed.
3. A review of the applicant's available service records reflects the following:
 - a. On 29 September 1972, the applicant enlisted in the Regular Army for 3 years at the rank of private.
 - b. On 15 March 1973, the applicant received Non-Judicial Punishment (NJP) under Article 15 of the Uniformed Code of Military Justice (UCMJ) for being absent without leave (AWOL) from 8 January 1973 – 7 March 1973, in violation of Article 86 of the UCMJ. The applicant was required to perform 30 days of extra duty and forfeit \$150.00 per month for 2 months.

c. On 23 April 1973, the applicant departed his duty station and was again reported as AWOL.

d. On 28 August 1973, the applicant returned to military control.

e. On 24 January 1974, the applicant's Commander initiated separation action further recommending that he be discharged from the Army and that an Undesirable Discharge Certificate be issued. He noted that in his opinion, the applicant had no motivation for continued service and would not respond to either counseling or rehabilitation. At that time, the applicant was pending a trial by court-martial for an offense punishable by a Bad Conduct or Dishonorable Discharge.

f. On 31 January 1974, the general court-martial convening authority approved the request and directed that the applicant be reduced to the lowest grade (private/E-1) and discharged for the good of the service. He would be issued an Undesirable Discharge Certificate, with a Separation Program Designator (SPD) code 246 in accordance with Army Regulation 635-200, paragraph 7-26b (3).

g. On 21 February 1974, the applicant was discharged from military service. DD Form 214 (Report of Separation from Active Duty) reflects the following:

- Item 9c. (Authority and Reason) - Army Regulation 635-200, Paragraph 10-1 SPD 246
- Item 9e. (Character of Service) – Under Conditions Other Than Honorable
- Item 10 (Reenlistment Code) – RE-4
- Item 18c. (Total Active Service) – 10 months 18 days
- Item 27 (Remarks) – 185 days - Time Lost Under 10 U.S.C. 972

h. On 6 April 1982, the Army Discharged Review Board advised the applicant that his request to change the type and nature of his discharge was denied.

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. Based upon the short term of honorable service prior to the misconduct leading to the applicant's separation and the lack of mitigation for such misconduct, 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> | |
|--------------|--------------|--------------|----------------------|
| : | : | : | 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.

//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. AR 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 may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicant's 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 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b. provides that 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 separation specifically allows such characterization.

c. Paragraph 3-7c. provides that a discharge Under Other Than Honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent: entry; homosexual conduct, security reasons, or in lieu of trial by court martial in the following circumstances:

- when the reason for separation is based upon a pattern of behavior that constitutes significant departure from the conduct expected of soldiers of the Army
- when the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of soldiers of the Army

d. Chapter 10 (Discharge in Lieu of Trial by Court-Martial) provides that a soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the manual for courts-martial (MCM) 1998 includes a bad conduct or dishonorable discharge may submit a request for discharge in lieu of trial by court-martial. The separation authority will be a commander exercising general, court-martial jurisdiction or higher authority. A discharge under Other Than Honorable Conditions normally is appropriate for a soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the soldier's overall record during the current enlistment.

//NOTHING FOLLOWS//