

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 February 2025

DOCKET NUMBER: AR20240008313

APPLICANT REQUESTS: correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), for the period ending 31 March 1970, to show in item 13a (Character of Service) an upgrade of his Under Conditions Other Than Honorable discharge to Honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Two Self-Authored Statements
- Two Letters from a Veteran Service Officer dated 25 March 2024
- DA Form 20 (Enlisted Qualification Record) Section 1-30
- Honorable Discharge Certificate dated 9 November 1966
- DD Form 214 for the period ending 31 March 1970
- Court documents dated 7 May 1975 (5 pages)

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. After high school he worked in an icehouse for several years before being drafted in the Army. He completed bootcamp at Fort Dix, New Jersey, after bootcamp he became a cook (95B20) and was assigned to Fort Bragg, North Carolina and here is where his problems begin. He moved in with a female friend and because she was nice enough, they got married after knowing each other for two weeks. She was not happy with his schedule and asked him to get out. He put his first marriage behind him and never completed a divorce. While still in the service he also worked as a bouncer and met his second wife (she worked at a different bar).

b. He says she told him her husband was killed in the service and after about a month he married her, but never divorced his first wife. When he submitted his marriage documents to finance it was discovered he was already married. While at a bar a police officer and military police arrived with a warrant out for his arrest, and he taken to jail for bigamy. He never understood why he was not taken to the Army stockade because he was still on active duty; he was discharged while in jail. After discharge, he and his family moved in with his mom in New York. Eventually his mom told his second wife to leave.

c. A few months later he met his current wife before getting married, he explained everything to a judge and was granted a divorce from previous wives. He has a son and four grandchildren and he is proud he served in the United States Army with great men and women of this country. It would mean the world to him if he was able to have an Honorable Discharge on his paperwork that he would be able to show his son and grandkids. He was young and defiantly not thinking when he got remarried without a formal divorce first and he now realize that was a big mistake. Please consider his upgrade request.

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

a. 27 September 1965, he was inducted into the Army of the United States.

b. On 21 March 1966, the applicant accepted nonjudicial punishment for without authority absenting himself from his organization and remain absent until on or about 0600 hours on 19 March 1966. His punishment included a reduction to private (PVT)/ E-1, forfeiture of \$22.00 pay per month for one month, 14 days of extra duty and 14 days of restriction.

c. DD Form 214 for the period ending 9 November 1966, shows the applicant entered active duty this period on 27 September 1965 and was honorably released from the active duty on 9 November 1966 for immediate enlistment in the Regular Army (RA).

d. He enlisted in the RA on 10 November 1966.

e. The applicant accepted nonjudicial punishment:

- on 6 March 1967, for without authority absenting himself from his unit and remain absent form 3 March 1967 until on or about 0430 hours on 6 March 1967, his punishment included a forfeiture of \$10.00 pay per month for one month, 14 days of extra duty and 14 days of restriction
- on 29 May 1967, for willfully disobeying a lawful order from his superior noncommissioned on or about 1800 hours on 23 May 1967, his punishment included a forfeiture of \$15.00 pay per month for one month

- on 15 June 1967, for failure to go at the prescribed place of duty, to wit Mess Hall, his punishment included a reduction to private E-2/PV2
- on 23 June 1967, for failure to go at the prescribed place of duty, to wit: on 17 and 18 June 1967 the mess hall, his punishment included a reduction to PVT/E-1, forfeiture of \$13.00 a month for one month, 14 days extra duty and 14 days restriction

f. DA Form 20B (Insert Sheet to DA Form 20 (Enlisted Qualification Record) Record of Court-martial Conviction) shows:

(1) Special Court-Martial Order Number 152 issued by Headquarters, 12th Support Brigade; charge I, specification 1 and 2 Absent Without Leave (AWOL) from 28 June 1967 to 23 August 1967 and 30 August 1967 to 11 September 1967 and charge II, the specification for breaking restriction on or about 29 August 1967. He was sentenced on 27 September 1967 to hard labor without confinement for 30 days, forfeiture of \$35.00 pay per month for 6 months and reduction to PVT/E-1.

(2) Summary Court-Martial Order Number 51 issued by Headquarters, 189th Maintenance Battalion; a charge of violation of a lawful regulation on 31 July 1968, by operating a privately owned vehicle after vehicle privileges were revoked. He was sentenced on 10 September 1968 to reduction to PVT/E-1, forfeiture of \$60.00 pay per month for one month and hard labor without confinement for 45 days.

(3) Summary Court-Martial Order Number 37 issued by Headquarters, 189th Maintenance Battalion, the charge, specification 1, 2, 3, and 4 failed to go at the prescribed place of duty at 1800 hours 25 July 1969, 1800 hours 26 July 1969, 1800 hours 27 July 1969 and 0430 hours 8 August 1969. He was sentenced on 16 August 1968 to hard labor without confinement for 45 days

g. DA Form 20 (Enlisted Qualification Record) show in section 38 (Record of Assignments) the applicant attended basic combat training and advanced individual training. He was dropped from rolls on 25 July 1967 and in civilian confinement on 18 September 1969. He was discharged on 31 March 1970. It also shows in section 42 (Remarks) he was tried and convicted at Fayetteville City court on the charge of bigamy and sentenced to 1 year in jail.

h. On 4 February 1970, the applicant's immediate commander initiated a separation action on him under the provisions of Army Regulation 635-206 (Personnel Separations – Discharge Misconduct (Fraudulent Entry, Conviction by Civil Court and Absence Without Leave or Desertion) by reason of conviction in civil court to a charge of Bigamous Cohabitation for which the applicant received a sentence of one (1) year in the North Carolina State Department of Correction with the recommendation he be issued an Undesirable Discharge Certificate (DD Form 258A). On 4 March 1970, he

was notified of his commander's intended separation against him and he acknowledged receipt of the notification of separation action on at 1530 hours on the same day.

i. After waiving consulting with legal counsel, he acknowledged:

- he may up until the date of discharge withdraw his waiver and request a Board of officers hear his case
- he did not intend to appeal his conviction, or adjudication as a juvenile offender
- he understood that he may expect to encounter substantial prejudice in civilian life in the event a general discharge under honorable conditions is issued to him, as the result of issuance of an undesirable discharge under conditions other than honorable, he may be ineligible for many or all benefits as a Veteran under both Federal and State laws

j. On 23 March 1970, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation, under the provisions of Army Regulation 635-206, by reason of conviction by civil court. The applicant was given an Undesirable Discharge (DD Form 258A).

k. On 31 March 1970, he was discharged from active duty with an under conditions other than honorable characterization of service. His DD Form 214 for the period ending 31 March 1970 shows he completed 2 years, 7 months, and 2 days of active service with 290 days of lost time. He was assigned separation code SPN 284 and the reason for separation listed as "Enlisted Member (EM) Convicted by Civil Court During Current Term of Military Service," with reentry code 3 and 3B. It also shows he was awarded or authorized:

- National Defense Service Medal
- Armed Forces Expeditionary Medal

4. The applicant provides:

a. Two letters from a Veterans Service Officer dated 25 March 2024 indicates the assistance the Division of Veteran Services has provided the applicant in his pursuit to obtain a discharge upgrade.

b. Honorable Discharge Certificate dated 9 November 1966.

c. Court documents indicating a judgement of divorce between the applicant and Mrs. [REDACTED] dated 8 May 1975.g

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 completed prior to a lengthy pattern of misconduct 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>	
:	:	:	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//  
X  
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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 635-206, in effect at that time, set forth the basic authority for the separation of enlisted personnel due to misconduct (fraudulent entry, conviction by civil court, and absence without leave or desertion). Paragraph 33 of the regulation provided that members would be considered for discharge when it was determined that one or more of the following applied:

- when the Soldier was initially convicted by civil authorities, or action taken against the Soldier which was tantamount to a finding of guilty, of an offense for which the maximum penalty under the Uniform Code of Military Justice was death or confinement in excess of 1 year;
- when initially convicted by civil authorities of an offense which involved moral turpitude, regardless of the sentence received or maximum punishment permissible under any code; or
- when initially adjudged a juvenile offender for an offense involving moral turpitude. An undesirable discharge was normally considered appropriate.

3. 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. Honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of the acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. General discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Under Other Than Honorable Conditions 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, homosexuality, security reasons, or for the good of the 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/NRs) 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 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//