

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 February 2025

DOCKET NUMBER: AR20240008410

APPLICANT REQUESTS: upgrade of his under other than honorable conditions character of service to under honorable conditions (general) or honorable.

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) in lieu of a 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 he was discharged over 50 years ago and this bad discharge has been hanging over his head ever since. When he joined, he had the intention of making a career out of the Army. His girlfriend and he talked it over and decided the Army would be a good move if they were going to get married, so he joined. After a while, he found out she was pregnant with their daughter but after a while she stopped writing, and he had no idea what had happened to her. He was due to graduate Basic Combat Training, and he couldn't think straight from the worry. He graduated Basic Combat Training, and the next day he asked for leave so he could find out what was going on with her. His request was denied, so he left anyway. He had to find out if she was okay. He knows it was the wrong thing to do, but he was under great mental stress. He turned himself in after a couple of weeks and was taken back to Fort Ord where he was discharged. That has been over 50 years ago, and he has regretted it terribly all of these years.
3. The applicant enlisted in the Regular Army on 14 September 1971. He did not complete training to receive a military occupational specialty.

4. On 2 November 1971, he accepted punishment under the provisions of Article 15, Uniform Code of Military Justice, for absenting himself without authority from his unit from 30 October 1971 to 2 November 1971. His punishment was to forfeit \$30 per month for 1 month, to be restricted to the company area for 20 days, and to perform extra duty for 10 days.
5. A DA Form 20 (Enlisted Qualification Record) shows in item 44 (Time Lost...) he was absent without leave (AWOL) from 20 November 1971 through 2 April 1972 and dropped from the rolls on 19 December 1971. He had a total of 133 days of lost time.
6. The available records do not include a separation packet. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged on 2 June 1972 in the lowest enlisted pay grade under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. His service was characterized as under other than honorable conditions, and he completed 4 months and 6 days of net service.
7. On 2 August 1977, the applicant applied to the Army Discharge Review Board (ADRB). In support of his application, he provided a statement describing the conditions in which his pregnant girlfriend was living and explained his reasoning for going AWOL. He noted that he married his girlfriend, and she provided a brief statement confirming his statement. (*The complete document is available for the Board to review.*)
8. On 29 March 1978, the applicant was notified the ADRB determined he was properly discharged and his request for a change in the type and nature of his discharge had been denied.
9. Army Regulation 635-200, Chapter 10, provides for voluntary requests for discharge in lieu of trial by court-martial. The under other than honorable conditions character of service is normally considered appropriate.
10. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

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 determined there is insufficient evidence of in- service mitigating factors to overcome the misconduct. The Board acknowledged the applicant's personal circumstances at the time of his service, including his concern for his pregnant girlfriend and the emotional distress he experienced. However, this Board must evaluate the request based on the standards of military service and the nature of the misconduct.

2. The Board found the applicant completed 4 months and 6 days and did not complete training to earn a military occupational specialty. His record reflects multiple instances of unauthorized absence, including an Article 15 for AWOL from 30 October to 2 November 1971, followed by a prolonged AWOL period from 20 November 1971 through 2 April 1972, totaling 133 days of lost time. The Board recognized the applicant's remorse and the passage of time since his discharge, the severity and duration of his misconduct, particularly the extended AWOL period, reflect a serious departure from expected military standards. The applicant provided not post service achievements or character letters of support for the Board to weigh a clemency determination. Based on the preponderance of evidence the Board denied relief.

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 635-200 sets forth the basic authority for the separation of enlisted personnel.

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 the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have

included the individual's admission of guilt. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate.

3. 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.

//NOTHING FOLLOWS//