

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 April 2025

DOCKET NUMBER: AR20240008513

APPLICANT REQUESTS:

- upgrade of his undesirable discharge to under honorable conditions (general)
- an appearance hearing with the Board

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

- DD Form 149 (Application for Correction of Military Record), 3 June 2024
- Applicant Statement, 27 May 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:

a. He was assigned to Fort Jackson for basic training and Advanced Individual Training (AIT). He did not complete AIT because of frightening news about his mother's health. His Drill Sergeant gave him permission to return home and allowed him to get his things to go home immediately. He said he would speak to his commanding officer about the situation. He left that Friday afternoon because it was a no-work weekend. When he boarded a bus to return on that Sunday, he was arrested by Police officers and sent to Fort Gordon. He was given nonjudicial punishment for two weeks.

b. Once again, he called home to check on his mother and was told she was in the emergency room. He told the new sergeant, and his sergeant reminded him of the previous false alarm about his mother's health, so he left without permission this time. He was arrested during her funeral in front of his family, and he was hurt and embarrassed. He was taken back to Fort Jackson and given paperwork for discharge. He was not allowed to give his side of the story.

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

a. On 13 November 1973, he enlisted in the Regular Army for 3 years. His record shows no promotions during his service.

b. On 26 November 1973, he was assigned to Fort Jackson, SC for Basic Combat Training.

c. A Military Police Report, dated 18 March 1974, shows civil authorities apprehended him on 13 March 1974 while he was in an absent without leave (AWOL) status, and returned him to military control at Greenville, SC.

d. On 22 March 1974 court-martial charges were preferred against him. A DD Form 458 (Charge Sheet) reflects he was charged with two specifications of being AWOL:

- 14 January 1974 to 7 February 1974, 29 days
- 1 March 1974 to 13 March 1974, 12 days

e. After consulting with legal counsel on 3 April 1974 he voluntarily requested discharge for the good of the service in lieu of trial by court-martial, under the provisions of Chapter 10, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel). In doing so, he acknowledged that the charges preferred against him under the Uniform Code of Military Justice, authorized the imposition of a bad conduct discharge or dishonorable discharge. He further acknowledged:

- he had been advised of the implications that were attached to it
- by submitting the request, he was acknowledging he was guilty of the charge(s) against him or of (a) lesser included offense(s) therein contained which also authorized imposition of a bad conduct or dishonorable discharge
- he could be discharged under other than honorable conditions, furnished an undesirable certificate, and he could be ineligible for many, or all benefits administered by the Department of Veterans Affairs (VA)
- he could be deprived of many, or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he could expect to encounter substantial prejudice in civilian life by reason of an under other than honorable conditions discharge
- he was advised he could submit any statements he desired in his own behalf, and elected not to do so

f. On 10 April 1974, his company commander recommended approval of his request for discharge. His intermediate commanders subsequently recommended approval of his request for discharge.

g. On 15 April 1974, the separation authority approved his discharge for the Good of the Service with issuance of an Undesirable Discharge Certificate.

h. On 19 April 1974, he was discharged. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. He completed 3 months and 27 days of net active service this period with 40 days' time lost.

4. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

5. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination 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. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. 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. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, paragraph 2-11 reads that applicants 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 (Personnel Separations – Enlisted Personnel) in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

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, under the UCMJ and the Manual for Court Martial, 1969 (Revised Edition), the authorized sentence included a punitive discharge, could submit a request for discharge for the good of the service for conduct triable by court-martial. The request could be submitted at any time after charges were preferred. Although an honorable or general discharge could be directed, an Undesirable Discharge Certificate would normally be furnished to an individual who was discharged for the good of the service.

//NOTHING FOLLOWS//