

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 April 2025

DOCKET NUMBER: AR20240008978

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions to under honorable conditions (general).

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

- DD Form 149 (Application for Correction of Military Record), 24 May 2024
- Self-authored statement, undated
- Presidential Clemency Board letter, 27 August 1975

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, after completing basic training he learned his girlfriend was pregnant. Her uncle, a priest, contacted the applicant's superiors urging them to send him home to take care of his family. He made the decision to go absent without leave to support his girlfriend and to get married, believing it was the right thing to do. The situation worsened, leading to him being convicted by a court-martial and time in the stockade. While in the stockade he was encouraged to write a letter criticizing the Army, unaware it would harm him eventually. After his discharge, he secured part-time work with Southern Pacific Railroad. When he was offered a full-time position, he was asked to provide his discharge papers but could not provide them. He was eventually granted a clemency discharge by the President of the United States.
3. The applicant provided a letter from the Presidential Clemency Board, 27 August 1975, showing he was granted a conditional clemency for his absence offense, and he would receive a full pardon and clemency discharge once he completed three months of alternative service.
4. A review of the applicant's record shows:
 - a. He enlisted on the Regular Army 14 June 1968.

b. On 30 July 1968, he accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice, for failing to repair himself to his appointed place of duty, to wit: bed check. His punishment included forfeiture of \$23.00, 14 days restriction, and 14 days extra duty.

c. Headquarters Special Troops, Special Court-Martial Order Number 106, 16 January 1969, shows the applicant was convicted by a special court-martial for, on or about 1 October 1968, without authority, absent himself from his unit, and did remain so absent until on or about 7 January 1969.

(1) His punishment, adjudged on 15 January 1969, included confinement at hard labor for five months, and forfeiture of \$68.00 per month for five months.

(2) On 16 January 1969, the convening authority approved only so much of the sentence as provides for five months of confinement and forfeiture of \$48.00 per month for five months (suspended for five months unless sooner vacated) was approved and duly executed.

(3) Headquarters Special Troops, Special Court-Martial Order Number 201, 6 February 1969, suspended the unexecuted portion of the sentence to confinement at hard labor for five months, effective 10 February 1969, for five months, unless sooner vacated.

d. Headquarters Special Troops, Special Court-Martial Order Number 1588, 3 December 1969, shows the applicant was convicted by a special court-martial for, on or about 11 February 1969, without authority, absent himself from his unit, and did remain so absent until on or about 1 November 1969.

(1) His punishment, adjudged on 24 November 1969, included confinement at hard labor for five months, and forfeiture of \$76.00 per month for five months.

(2) On 3 December 1969, the convening authority approved only so much of the sentence as provides for five months of confinement and forfeiture of \$50.00 per month for five months (suspended for five months unless sooner vacated), was approved and duly executed.

e. On 23 February 1972, the applicant voluntarily requested discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10. The applicant acknowledged that he made the request of his own free will and was not coerced by any person. He understood that if the request was accepted, he could be discharged under other than honorable conditions and furnished an undesirable discharge certificate. He further

acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veteran's Administration, he could be deprived of his rights and benefits as a veteran under both Federal and State law and encounter substantial prejudice in civilian life because of an under other than honorable discharge.

f. On the same day, his immediate commander recommended approval of the applicant's request for discharge under the provisions of AR 635-200, chapter 10, and recommended he be issued an undesirable discharge.

g. On 24 February 10, his intermediate commander recommended approval of the applicant's request for discharge under the provisions of AR 635-200, chapter 10, and recommended he be issued an undesirable discharge. He noted the applicant had no potential for rehabilitation and that minimal rehabilitation effect can be expected from any kind of punishment.

h. On 25 February 2972, the separation authority approved the recommended discharge, under the provisions of AR 635-200, chapter 10, and directed the applicant be reduced to the lowest enlisted grade and be issued an undesirable discharge certificate.

i. His DD Form 214 (Armed Forces of the United States Report of Transfer of Discharge) shows he was discharged in the rank/grade of private/E-1 on 1 March 1972 under the provisions of Army Regulation 635-200, for the good of the service. He completed 4 months and 19 days of net active service with lost time from 5 February 1970 to 11 February 1972. His service was characterized as under other than honorable conditions. He was issued the separation program number "246" and the reenlistment code "3B, and 4". Item 24 (Decorations, Medals, Badges, Commendations, Citation and Campaign Ribbons Awarded or Authorized), shows he was awarded or authorized the following:

- National Defense Service Medal
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-14)

j. His DD Form 215 (Correction to DD Form 214), 26 January 1977, added an entry to item 30 (Remarks) of his DD Form 214. This entry indicated he was issued a Clemency Discharge in recognition of satisfactory completion of alternate service pursuant to Presidential Proclamation 4313.

5. There is no indication he applied to the Army Discharge Review Board for review of his discharge processing within that Board's 15-year statute of limitations.

6. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

7. Presidential Proclamation 4313, issued on 16 September 1974, provided for the issuance of a clemency discharge to members of the Armed Forces who were in an unauthorized absence status and certain former Soldiers who voluntarily entered into and completed an alternate restitution program specifically designed for former Soldiers who received a less than honorable discharge for AWOL-related incidents between August 1964 and March 1973.

8. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his characterization of service from under other than honorable conditions to under honorable conditions (general). The applicant selected OMH on his application as related to his request.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- Applicant enlisted into the Regular Army on 14 June 1968.
- On 30 July 1968, he accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice, for failing to report himself to his appointed place of duty, to wit: bed check.
- Headquarters Special Troops, Special Court-Martial Order Number 106, 16 January 1969, shows the applicant was convicted by a special court-martial for, on or about 1 October 1968, without authority, absent himself from his unit, and did remain so absent until on or about 7 January 1969.
- Headquarters Special Troops, Special Court-Martial Order Number 1588, 3 December 1969, shows the applicant was convicted by a special court-martial for, on or about 11 February 1969, without authority, absent himself from his unit, and did remain so absent until on or about 1 November 1969.
- His DD Form 214 (Armed Forces of the United States Report of Transfer of Discharge) shows he was discharged in the rank/grade of private/E-1 on 1 March 1972 under the provisions of Army Regulation 635-200, for the good of the service. His service was characterized as under other than honorable conditions. He was issued separation program number "246" and reenlistment code "3B, and 4".

- His DD Form 215 (Correction to DD Form 214), 26 January 1977, added an entry to item 30 (Remarks) of his DD Form 214. This entry indicated he was issued a Clemency Discharge in recognition of satisfactory completion of alternate service pursuant to Presidential Proclamation 4313.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, after completing basic training he learned his girlfriend was pregnant. Her uncle, a priest, contacted the applicant's superiors urging them to send him home to take care of his family. He made the decision to go absent without leave to support his girlfriend and to get married, believing it was the right thing to do. The situation worsened, leading to him being convicted by a court-martial and time in the stockade. While in the stockade he was encouraged to write a letter criticizing the Army, unaware it would harm him eventually. After his discharge, he secured part-time work with Southern Pacific Railroad. When he was offered a full-time position, he was asked to provide his discharge papers but could not provide them. He was eventually granted a clemency discharge by the President of the United States.

d. Due to the period of service, no active-duty electronic medical records were available for review. However, the applicant provided a letter from the Presidential Clemency Board, dated 27 August 1975, showing he was granted a conditional clemency for his absence offense, and he would receive a full pardon and clemency discharge once he completed three months of alternative service. A DD Form 215 states "clemency discharge issued in recognition of satisfactory completion of alternative service pursuant to Presidential Proclamation No. 4313".

e. The Veterans Affairs (VA) Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and no VA electronic medical records were available for review.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that could potentially mitigate his discharge. However, there is evidence he received a pardon and clemency.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH on his application as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or after his discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for any other mental health condition. And while the applicant self-asserted OMH, he did not provide any medical documentation substantiating any BH diagnosis. However, there is evidence he received a pardon/clemency, and his characterization of service should be revised accordingly.

h. Per Liberal Consideration guidelines, his contention of OMH is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The applicant was charged with being absent without leave from 1 October 1968 to 7 January 1969, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found the applicant's request had already been satisfied with the Clemency Discharge issued by the DD Form 215, dated 26 January 1977. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration, the Board determined relief was not warranted.

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH on his application as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or after his discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of

any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for any other mental health condition. And while the applicant self-asserted OMH, he did not provide any medical documentation substantiating any BH diagnosis. However, there is evidence he received a pardon/clemency, and his characterization of service should be revised accordingly.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	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.

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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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a Soldier who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. 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 or for the good of the service.

e. When a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade.

3. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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. Presidential Proclamation 4313, issued on 16 September 1974, provided for the issuance of a clemency discharge to members of the Armed Forces who were in an unauthorized absence status and certain former Soldiers who voluntarily entered into and completed an alternate restitution program specifically designed for former Soldiers who received a less than honorable discharge for AWOL-related incidents between

August 1964 and March 1973. Alternate service was to be performed under the supervision of the SSS. When the period of alternate service was completed satisfactorily, the SSS would notify the individual's former military service. The military services issued the actual clemency discharges. The clemency discharge is a neutral discharge, neither honorable nor less than honorable. The clemency discharge did not affect the underlying discharge and did not entitle the individual to benefits administered by the VA. Soldiers who were AWOL entered the program by returning to military control and accepting a discharge for the good of the service in lieu of trial by court-martial.

//NOTHING FOLLOWS//