

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 May 2025

DOCKET NUMBER: AR20240009139

APPLICANT REQUESTS: upgrade of his under conditions other than honorable discharge.

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 he was unable to adjust to military life. He has been trying to adjust his discharge. He had an attorney that quit in the middle of the proceedings. Discharge is needed for upgrade in medical help. He grew up incarcerated, so he had a very hard time adjusting to military life.
3. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 21 July 1971.
  - b. On 12 January 1972, at Fort Lewis, WA, the applicant was found guilty by a summary court-martial (SCM) of being absent without leave (AWOL) from on or about 8 October 1971 until on or about 29 December 1971. The court sentenced him to confinement at hard labor for 10 days, forfeiture of \$60.00 pay per month for one month, and reduction to the grade of private/ E-1.
  - c. On 17 January 1972, the convening authority approved the sentence and ordered it executed, but the execution of that portion of the sentence that provides for confinement for 10 days, was suspended until 12 March 1972.
  - d. On 14 March 1972, at Fort Ord, CA, the applicant was found guilty by a SCM of being AWOL from on or about 2 February 1972 until on or about 3 March 1972. The

court sentenced him to forfeiture of \$165.00 pay per month for one month, and confinement at hard labor for 30 days.

e. On 16 March 1972, the convening authority approved the sentence and ordered it executed, but the execution of that portion of the sentence that provides for confinement for 30 days, was suspended for 60 days. The service of the sentence to confinement at hard labor for thirty days was deferred on 14 March 1972.

f. On 23 March 1972, his commander notified him of his intent to separate him under the provisions (UP) of Army Regulation (AR) 635-212 (Discharge Unfitness and Unsuitability), paragraph 10a (1) due to unfitness; he acknowledged on the same date.

g. He was advised by consulting counsel of the basis for the contemplated action to separate him for unfitness UP of AR 635-212 and its effects; of the rights available to him; and the effects of any action by him waiving his rights.

h. His commander recommend approval and that he receives an Undesirable Discharge Certificate.

i. On 13 April 1972, the separation authority approved discharge with an Undesirable Discharge Certificate, UP of AR 635-212 with a separation program number (SPN) of 28B. Also, he was to be reduced to the lowest enlisted grade.

j. Accordingly, he was discharged on 25 April 1972, under conditions other than honorable. His DD Form 214 (Report of Transfer or Discharge) shows he completed 5 months and 5 days net service this period. He had 120 days of lost time from 8 October 1971 – 28 December 1971, 4 January 1972 – 11 January 1972, and 2 February 1972 – 2 March 1972. The reason and authority show as AR 635-212, with a Separation Program Number (SPN) of 28B.

4. There is no evidence the applicant applied to the Army Discharge Review Board for review 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 his service record in accordance with the published equity, injustice, or clemency determination guidance.

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 pattern of misconduct leading to the applicant's separation, and the lack of any mitigating and/or clemency evidence provided by the applicant, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

|      |      |      |                      |
|------|------|------|----------------------|
| :    | :    | :    | 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

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 (AR) 635-212 (Discharge Unfitness and Unsuitability), in effect at the time, set forth the basic authority for the elimination of enlisted personnel for unfitness and unsuitability. Paragraph 6a of the regulation provided that an individual was subject to separation for unfitness when one or more of the following conditions existed: (1) because of frequent incidents of a discreditable nature with civil or military authorities; (2) sexual perversion including but not limited to lewd and lascivious acts, indecent exposure, indecent acts with or assault on a child; (3) drug addiction or the unauthorized use or possession of habit-forming drugs or marijuana; (4) an established pattern of shirking; (5) an established pattern of dishonorable failure to pay just debts; and (6) an established pattern showing dishonorable failure to contribute adequate support to dependents (including failure to comply with orders, decrees or judgments). When separation for unfitness was warranted, an undesirable 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/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. 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. 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//