

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 April 2025

DOCKET NUMBER: AR20240009170

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions characterization of service.

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Report of Separation from Active Duty), for the period ending 23 May 1977
- Character Reference Statement
- Photo of Applicant and his daughter

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 is a single veteran who lost his wife, his high school sweetheart, in 1977. His chain of command did not support his leave request, and he lost it. He is no longer able to work with his chronic obstructive pulmonary disease (COPD) and lung cancer. An improvement to his characterization of discharge might allow him to enroll for benefits. He has a perfectly clean record and has retired from his job of 25 years. He has no bankruptcy, and his kids are contributing members in society.
3. The applicant provides:
 - a. A letter from his daughter attesting to him being a good father and in the 37 years of her life never seeing him in trouble. He took pride at his job being a route driver and building strong relationships with the customers which he talks to today after being retired. Her dad was raised in Wisconsin with his brothers and sisters which he frequently visits. He is a brother, dad, American and a good human.

b. A photo of the applicant with his daughter.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 7 January 1975.

b. Three DA Forms 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) show he accepted nonjudicial punishment (NJP) on three separate occasions for the following offenses:

- 22 November 1976 for failure to be at this appointed place of duty on 15 November 1976, his punishment included reduction to Private First Class/E-3 suspended 30 days
- 23 December 1976 for being absent without leave (AWOL) from his unit on or about 13 December 1976 to on or about 20 December 1976, his punishment included reduction to Private/E-2
- 29 April 1977 for without authority fail to go to his appointed place of duty (extra duty) on or about 19 April 1977, his punishment included reduction to Private/E-1

c. A DA Form 3822 (Report of Mental Status Evaluation) dated 11 April 1977 shows the applicant underwent a command referred mental status evaluation. The report noted he had no significant mental illness and had the mental capacity to understand and participate in board proceedings. He was psychiatrically cleared for administrative separation.

d. On 2 May 1977, the applicant's commander notified him of the intent to initiate administrative separation action under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13 for unfitness due to frequent incidents of a discreditable nature with civil or military authorities. The applicant acknowledged receipt on the same day.

e. On 6 May 1977, after consulting with legal counsel, he acknowledged the rights available to him and the effect of waiving said rights. He elected to submit a statement on his own behalf. He waived consideration of his case before a board. He further noted in his personal statement:

- he received one of the top grades in training and was promoted:
- he received counselings for being late to formation during the period he found out his wife left him and moved in with another man
- he was charged with being absent without leave (AWOL) at the time he went to speak with his father about the situation

- he received punishment upon returning and felt the Army no longer needed him
- he was left with responsibility over his son, placed him in daycare, and was late to formation
- he felt the Army and he should receive an honorable discharge

f. The immediate commander initiated separation action against the applicant for incidents of discreditable nature with military authorities. The reasons for his proposed action were for the applicant's three periods of AWOL with a total of 7 days lost. He recommended that his period of service be characterized as under other than honorable conditions.

g. The applicant's service record is void of the separation authority approval.

h. On 23 May 1977, he was discharged under the provisions of AR 635-200, paragraph 13 by reason of discreditable incidents-civilian or military with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 2 years, 4 months, and 10 days of active service and 7 days of lost time.

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The Board determined due to the applicant's personal issues, the fact that he had no serious misconduct, and his post service conduct, the Board concluded that his character of service should be upgraded to a general discharge.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
XXX	XXX	XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 23 May 1977 to show in item 24 (Character of Service): General.

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

a. Paragraph 1-9d (Honorable Discharge) states an honorable discharge is a separation with honor. Issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty during the member's current enlistment of current period of service with due consideration for the member's age, length of service, grade, and general aptitude.

b. Paragraph 1-9e (General Discharge) states a general discharge is a separation from the Army under honorable conditions of an individual whose military record is not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 13 of the regulation states action will be taken to separate an individual for unfitness when it is clearly established that despite attempts to rehabilitate or develop him as a satisfactory Soldier, further effort is unlikely to succeed. An individual separated by reason of unfitness, will be furnished an undesirable discharge certificate, except that an honorable or general discharge certificate may be issued if the individual has been awarded a personal decoration or if warranted by the particular circumstances in the case.

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, 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.

//NOTHING FOLLOWS//