

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 April 2025

DOCKET NUMBER: AR20240009197

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

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 DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- DA Form 20 (Enlisted Qualification Record), 22 August 1974
- DA Form 2-1 (Personnel Qualification Record – Part II), 27 February 1975
- DD Form 214 (Report of Separation from Active Duty) for the period ending 7 March 1975
- Numerous Civilian Educational Certificates (all after his period of military service)
- Numerous Letters of Support

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. With the consent of his parents at the age of 17, the applicant enlisted in the Regular Army on 6 November 1973 for a period of 3 years.
3. DA Form 4187 (Personnel Action), on 9 September 1974 shows his duty status changed from "ordinary leave" to "absent without leave (AWOL)" effective 7 September 1974.
4. DA Form 4187, 2 December 1974 shows his duty status changed from "AWOL" to "dropped from unit rolls (DFR)" effective 4 November 1974.

5. DA Form 4187, on 27 February 1975 shows he surrendered to military authorities at Fort Sill, OK on 19 February 1975. Thereby changing his duty status from "DFR" to attached to the Personnel Control Facility, Fort Sill effective 19 February 1975.

6. Court-martial charges were preferred against the applicant on 19 February 1975, for violation of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows, he was charged with one specification of violation of Article 86, in that he did on or about 4 November 1974, without proper authority, absent himself from his unit, and did remain so absent until on or about 19 February 1975 (a period of 3 months and 16 days).

7. DA Form 2496 (Disposition Form), on 20 February 1975, shows after consulting with legal counsel, he voluntarily requested discharge for the good of the service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service in lieu of trial by court-martial.

a. He was making this request of his own free will and has not been subjected to any coercion whatsoever by any person. By submitting this request for discharge, he acknowledges that he understood the elements of the offense charged and is guilty of the charges against him, which authorizes the imposition of a bad conduct or dishonorable discharge. Moreover, he states that under no circumstances does he desire further rehabilitation, for he has no desire to perform further military service.

b. He acknowledged he understood that if his discharge request were approved, he could be discharged under other than honorable conditions and furnished an Undesirable Discharge Certificate. He further acknowledged that as a result of such a discharge, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration (now known as the Department of Veterans Affairs), he could be deprived of his rights and benefits as a veteran under both Federal and State laws, and he could expect to encounter substantial prejudice in civilian life by reason of an undesirable discharge.

c. He elected to submit a statement in his own behalf. He noted he was going back to school when he gets out of the service. He noted the reason for his AWOL was due to his best friend getting killed and now his girlfriend was in trouble, and he wants to protect her. He returned to get a discharge.

8. His immediate commander recommended his request for discharge under provisions of Army Regulation 635-200, Chapter 10, be approved on 3 March 1975.

9. The approval authority approved the applicant's request for discharge on 4 March 1975, in lieu of trial by court-martial, and directed that he be reduced to the lowest enlisted grade and issued an Undesirable Discharge Certificate.

10. The applicant was discharged on 7 March 1975. His DD Form 214 shows in:

- item 6a (Grade, Rate, or Rank) – Private
- item 6b (Pay Grade) – E-1
- item 9a (Type of Separation) – Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10; SPD [Separation Program Designator] – KFS (for the good of the service in lieu of trial by court-martial)
- item 9e (Character of Service) – Under Other Than Honorable Conditions
- item 18a (Net Active Service This Period) – 1 year and 17 days
- item 18c (Total Active Service) – 1 year and 17 days
- item 27 (Remarks), contains the entries: "Days lost under 10 USC 972 [Title 10, U.S. Code, Section]: 107"

11. He provides (see attachment for further details):

a. numerous educational certificates of bettering himself through taking educational classes including obtaining his general educational development (GED) and

b. numerous letters of support of his character, honesty, and hard work.

12. The Board should consider the applicant's statement in accordance with the published equity, injustice, or clemency determination guidance.

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 applicant was charged with absenting himself from his unit from 4 November 1974 to 19 February 1975, punishable under the UCMJ 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 no error or injustice in the separation proceedings and designated character of service assigned by his commander during separation. One possible outcome was to deny relief based on the applicant being AWOL for more than 3 months. The Board majority noted the applicant's post-service achievements and character letters of reference to support clemency. Based on this, the Board determined relief was appropriate to amend his characterization of service to under honorable conditions (general).

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

XXX	XXX	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
	:	XXX	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 7 March 1975 to show in item 24 (Character of Service): under honorable conditions (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), set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. 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 (Discharge for the Good of the Service) provided that a Soldier who 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.

(1) Commanders would ensure that an individual would not be coerced into submitting a request for discharge for the good of the service. The member would be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge.

(2) The request could be submitted at any time after charges were preferred and must have included the individual's admission of guilt.

(3) If the member elected to submit a request for discharge for the good of the service after receiving counseling, he would personally sign a written request certifying that he had been counseled, that he understood his rights, that he may receive a discharge under other than honorable conditions, and that he understood the adverse nature of such a discharge and the possible consequences.

(4) A discharge under other than honorable conditions normally were appropriate for a Soldier who was discharged for the good of the service. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

d. Paragraph 14-4 (Authority for Discharge or Retention) stated upon determination that a member is to be separated with a discharge under other than honorable conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority.

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//