

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

a. He enlisted in the Regular Army on 18 October 1974.

b. He received nonjudicial punishment on:

- 29 March 1976 – for willfully disobeying a lawful order on 18 March 1976
- 24 June 1976 – for absenting himself from his place of duty from 15 June 1976 to 17 June 1976.
- 12 July 1976 – for willfully disobeying a lawful order on 2 July 1976

c. Seven DA Forms 4187 (Personnel Action) shows the applicant's duty status was changed on the following dates:

- Ordinary Leave to Absent Without Leave (AWOL) – 26 May 1976
- AWOL to Present for Duty (PDY) – 30 May 1976
- PDY to AWOL – 15 June 1976
- AWOL to PDY – 17 June 1976
- PDY to AWOL – 9 August 1976
- AWOL to Dropped from Rolls – 7 September 1976
- Dropped from Rolls to Attached – 18 December 1976

d. On 30 December 1976, the following court-martial charge was preferred against the applicant: one specification of violation of Article 86 (AWOL), in that he did, on or about 9 August 1976, without authority, absent himself from his unit and did remain so absent until on or about 18 December 1976.

e. On 5 January 1977, the applicant underwent a mental status evaluation. The examining official determined he did not have mental illness and the capacity to understand and participate in board proceedings.

f. On 7 January 1977, he requested discharge for the good of the service in lieu of trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. He 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.

g. On 12 January 1977, 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 under other than honorable conditions characterization of service.

h. On 18 January 1977, 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.

i. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged in the rank/grade of private/E-1 on 25 January 1977 under the provisions of AR 635-200, chapter 10. He completed 1 year, 10 months, and 19 days of net active service with 137 days lost time. His service was characterized as under other than honorable conditions. He was issued the separation program designator "JFS" and the reenlistment code "RE-3B". Item 26 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized), shows he was awarded or authorized the Marksman Marksmanship Qualification Badge with Rifle Bar.

5. There is no indication the applicant 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 AR 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

7. The Board should consider the applicant's overall 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 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, character references and the reason for separation. The applicant received multiple nonjudicial punishments, counseling's and was pending a court-martial in lieu of trial by court-martial for being absent without leave from 9 August 1976, to 18 December 1976, 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 no error or injustice in the separation proceedings and designated characterization of service. Based on a preponderance of

the evidence, the Board concluded that the characterization 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
█	█	█	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.

8/13/2025

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CHAIRPERSON

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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. Army Regulation (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 member 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 member, regardless of whether the charges are referred to a court-martial and regardless of the type of court-martial to which the charges may be referred. The request for discharge may be submitted at any stage in the processing of the charges until final action on the case by the court-martial convening authority. Commanders will ensure that a member is not coerced into submitting a request for discharge for the good of the service. The member 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 member may elect to submit a request for discharge for the good of the service. The member 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 member who is discharged for the good of the service. However, the discharge authority may direct an honorable or general discharge if such are merited by the member's overall record during the current enlistment.

b. An honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable condition is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and for the good of the service.

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 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.

//NOTHING FOLLOWS//