

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 March 2025

DOCKET NUMBER: AR20240009555

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general). Additionally, he requests appearance before the Board, via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter addressed to the Department of Veterans Affairs
- DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge)

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:

a. His father was in the 2nd World War and the Korean War. He received a medical discharge because of the wounds he received in combat. At the time he went absent without leave (AWOL) his father was in the hospital battling tuberculosis and his brother was incarcerated. His mother and young sister needed some help. He asked his first sergeant (1SG) for emergency leave or a hardship discharge; but his 1SG thought it would be a waste of time. Without support from his unit; he decided to go AWOL.

b. He knows going AWOL was wrong, but at the time he did not feel like he had a choice, and he does not feel that helping his family in times of need is dishonorable. If his superiors would have given him emergency leave, he is confident that he would have gotten an honorable discharge. During his time in service, he received several accolades in performance of various duties; he never received a delinquent report.

3. The applicant enlisted in the Regular Army on 14 November 1960.

4. On 14 August 1962, the applicant was reported as AWOL, and remained absent until he returned to military authorities on 24 August 1962.
5. Before a special court-martial on 14 September 1962, at Fort Bragg, NC, the applicant was found guilty of one specification of going AWOL. The court sentenced him to confinement at hard labor for five months, reduction to E-1, and forfeiture of \$50.00 per month for five months. The sentence was approved; however, only so much of the sentence as provided for confinement at hard labor for 45 days, reduction to E-1, and forfeiture of \$50.00 per month for five months.
6. On 1 December 1962, the applicant was reported AWOL a second time.
7. A U.S. Department of Justice report, dated 7 December 1962, shows the applicant had been arrested and charged with tampering with an auto, on or about 17 June 1962; and larceny of an auto, on or about 1 December 1962.
8. On 11 December 1962, the applicant returned to the control of military authorities.
9. On 19 December 1962, he was reported AWOL a third time, and remained absent until he returned to military authorities on 19 February 1963.
10. Before a special court-martial on 7 March 1963, at Fort Bliss, TX, the applicant was found guilty of two specifications of going AWOL. The court sentenced him to confinement at hard labor for six months, and forfeiture of \$70.00 per month for a like period. The sentence was approved on 8 March 1963.
11. On an undetermined date, the applicant was notified that actions were initiated to separate him under the provisions of Army Regulation 635-206 (Personnel Separations – Discharge – Misconduct (Fraudulent Entry, Conviction by Civil Court, AWOL, Desertion)).
12. The applicant acknowledged he had been informed of the contemplated separation action. He requested a hearing before a board of officers. He understood that if the discharge authority approved the recommendation for his discharge, he would also determine the type of discharge issued to him. He further understood that if an undesirable discharge was issued to him, that such discharge would be under conditions other than honorable; he may be deprived of many or all rights as a Veteran under Federal and State laws and that he could expect to encounter substantial prejudice in civilian life.
13. On 29 April 1963, the applicant's commander formally recommended his separation from service under the provisions of Army Regulation 635-206. He noted the applicant was tried and convicted by a civil court for transporting in interstate commerce a stolen

motor vehicle. He was sentenced to be confined for two years but the execution of this sentence was suspended, and he was put on probation for two years.

14. On 22 May 1963, a board of officers held a hearing to determine if the applicant should be eliminated from service. After careful consideration of the evidence before it, the Board found that the documentary evidence pertaining to the applicant's was irrefutable, and the verbal statements made by him and counsel could not be substantiated in any way available to the board. The Board recommended the applicant be given an undesirable discharge from the Army.

15. Consistent with the board's findings and recommendations, the separation authority approved the applicant's discharge on 1 July 1963, and directed issuance of a DD Form 258A (Undesirable Discharge Certificate).

16. The applicant was discharged on 11 July 1963. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-206, with Separation Program Number 284 (Misconduct). He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 2 years and 15 days of net active service this period with 225 days of lost time.

17. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency 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 pattern of misconduct leading to the applicant's separation, some of a criminal nature, 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.
 - a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. This regulation provides that:

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.

4. Army Regulation 635-206 (Personnel Separations – Discharge – Misconduct (Fraudulent Entry, Conviction by Civil Court, AWOL, Desertion)), in effect at the time, set forth the basic authority for the separation of enlisted personnel for misconduct. Section VI, (Conviction by Civil Court) of this regulation prescribes the standards and procedures for processing cases of individuals who, during their current term of active military service, have been initially convicted or adjudged juvenile offenders by a domestic court of the U.S. or its territorial possessions, or convicted by a foreign tribunal. If discharge is desired and the individual is not physically in the custody of the civil authorities, a recommendation for discharge may be submitted to Headquarters, Department of the Army. It provided that an undesirable discharge was normally considered appropriate for members separated under this regulation.

5. 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.

//NOTHING FOLLOWS//