

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 April 2025

DOCKET NUMBER: AR20240010092

APPLICANT REQUESTS:

- in effect, upgrade of his under other than honorable conditions (UOTHC) discharge
- personal 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), 12 June 2024
- Self-authored statement
- DD Form 214 (Report of Separation from Active Duty), 21 October 1975

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 one time he was a day late for reporting in and he was reported as absent without leave (AWOL). He received an Article 15; he talked to his command and believed it was all worked out. He then was told to go see lawyers about his discharge.
3. A review of the applicant's service record shows the following:
 - a. He enlisted in the Regular Army on 26 November 1974, for a 3-year period.
 - b. The highest rank he attained was private first class/E-3.
 - c. He accepted nonjudicial punishment under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) on 18 August 1975 for AWOL on or about 1 August 1975 and remaining absent until on or about 5 August 1975. His punishment imposed was forfeiture of \$50.00, 14 days extra duty, and 14 days restriction.

d. His duty status was changed on three occasions. The relevant DA Forms 4187 (Personnel Action) shows the following:

(1) He was reported from AWOL on 29 August 1975 and surrendered to military control on 4 September 1975. His duty status changed to present for duty (PDY).

(2) He was reported AWOL on 16 September 1975 and surrendered to military control on 6 October 1975. His duty status changed to PDY.

(3) He was reported AWOL on 7 October 1975 and surrendered to military control on 10 October 1975. His duty status changed to PDY.

e. His service record is void of documentation containing the specific facts and circumstances surrounding his discharge processing. However, his DD Form 214 shows he was discharged on 21 October 1975, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service), in the grade of E-1. His service was characterized as UOTHC. He was credited with 9 months and 24 day of net active service this period with 32 days lost time.

4. 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. Applicants do not have a right to appear personally before the Board.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered.

2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant 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.

3. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Further, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : 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.

5/6/2025

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) 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.

3. 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 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. 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.

c. 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. 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//