

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 June 2025

DOCKET NUMBER: AR20240010199

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions discharge to honorable
- change the narrative reason to "Secretarial Authority"
- change the separation code to an appropriate corresponding code

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

- DD Form 149 (Application for Correction of Military Record), 12 August 2024
- Counsel brief
- Exhibit (Ex) 1: Enlistment document, 17 October 1972
- Ex 2: Applicant statement
- Ex 3: DD Form 214 (Report of Separation from Active Duty), 2 August 1974
- Ex 4: 'Wilkie Memorandum' Guidance to Military Discharge Review Boards and Board for Correction of Military Records Regarding Equity, Injustice, or Clemency Determinations, 25 July 2018
- Ex 5: Points of Contact list
- Ex 6: Resume
- Ex 7: Employee Evaluation Report, 2001
- Ex 8 and Ex 9: Commendations, 2002 and 2004

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 provides a brief through counsel, which states:

a. The applicant had a clean record during the majority of his military service. The circumstances of his discharge revolve around another Soldier stationed at Fort Hood. This Soldier continually harassed the applicant by physical means, including pressing a

knife to the applicant's throat and to his back. He tried every tactic to avoid the Soldier, but he was threatened by the Soldier. He went absent without leave (AWOL) out of fear for his safety.

b. When he returned, the applicant was threatened by an officer holding an M-16, threatening he wanted to shoot the applicant. He left the base again for his own safety.

c. The applicant volunteered with a local Houston police station before becoming a full-time police officer. His dedication and work ethic led to him becoming a squad leader and promotion to sergeant. He apprehended hundreds of fugitives over a 2 year period. The accolades and commendations the applicant received speak to his professionalism and dedication to his job and community. He also worked in the trucking industry supporting his family

3. The applicant states, in a self-authored statement:

- he was harassed by another Soldier claiming to be a gang-member who pressed a knife against his back hard enough to draw blood
- a sergeant told him if he pursued the matter it could lead to retaliation
- he avoided the Soldier when he could, but he would still seek him out and threaten him with the knife
- he went AWOL to avoid the Soldier and was later arrested
- when he returned another Soldier with a loaded M-16 threatened to shoot him while they were in the barracks alone, so he left AWOL again

4. A review of the applicant's service records show the following:

- a. On 26 October 1972, he enlisted in the Regular Army for 3 years.
- b. On 15 February 1974, he was reported AWOL.
- c. On 10 June 1974, he was returned to military control and confined the next day.
- d. On 11 June 1974, a court-martial charge was preferred against him. He was charged with one specification of AWOL from 15 February 1974 to 10 June 1974.
- e. On 11 June 1974, he was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment, the possible effects of a under other than honorable conditions discharge, and the procedures and rights available to him. After receiving legal counsel, he voluntarily requested discharge, in lieu of trial by court-martial, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He did not submit a statement in his own behalf.

- f. The intermediate commanders recommended approval of his request.
 - g. On 1 July 1974, he was confined by civil authorities.
 - h. On 2 July 1974, the separation authority approved his discharge with issuance of an Undesirable Discharge Certificate, and directed he be reduced to the lowest grade.
 - i. On the same date, he was released from confinement by civil authorities.
 - j. On 2 August 1974, he was discharged. His DD Form 214 reflects he was discharged under the provisions of Army Regulation 635-200, chapter 10, with separation code KFS [for the good of the service - in lieu of court-martial], his service was characterized as under other than honorable conditions. He completed 1 year, 5 months, and 12 days of net active service with 117 days' time lost.
5. In reaching its determination, the Board can consider the applicant's petition and service record 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 not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. The evidence of record shows that court-martial charges were preferred against the applicant for being AWOL during the period 15 February 1974 through 10 June 1974. Such misconduct was punishable under the Uniform Code of Military Justice with a punitive discharge. Following the preferral of charges, the applicant consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board noted that the applicant completed only one year, five months, and twelve days of service. Based on the record, the Board determined that the applicant did not provide sufficient evidence to warrant a discharge upgrade. The Board found the applicant's discharge was appropriate under the circumstances and that no error or injustice occurred.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

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, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3-7 provided:

(1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Only the honorable characterization may be awarded a member upon completion of his/her period of enlistment or period for which called or ordered to active duty or active-duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

b. Paragraph 5-3. Secretarial Authority. The separation of enlisted personnel for the convenience of the Government is the prerogative of the Secretary of the Army and will be accomplished only by his authority. Except as delegated by this regulation or by special Department of the Army directives, the discharge or release of any enlisted member of the Army for the convenience of the Government will be in the Secretary's discretion with issuance of an honorable or general discharge certificate as determined by him.

c. Chapter 10 stated a member who has committed an offense or offenses, the punishment of which under the UCMJ and the Manual for Court Martial, 1969 (Revised Edition) 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, or, where required, after referral, until final actions by the court-martial convening authority.

d. An under other than honorable discharge certificate normally is appropriate for a member who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate if such is merited by the member's overall record during the current enlistment.

3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or

full-time training duty. The separation program designator "JFF" corresponded to "Secretarial Authority," and the authority, Army Regulation 635-200, paragraph 5-3.

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//