

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 May 2025

DOCKET NUMBER: AR20240010276

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his other than honorable conditions discharge to general, under honorable conditions. Also, an 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)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20150019065 on 4 May 2017.

2. The applicant states he was a teen at the time, and he made a mistake. He is 72 years old, and he still cares about what his country thinks of him. It is important to him that he ends his life without the other than honorable on his record.

3. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 20 January 1969.

b. He received non-judicial punishment (NJP) on/for:

- 25 April 1969/ on or about 25 April 1969, without authority, fail to go at the time prescribed to his appointed place of duty (Reveille)
- 3 May 1969/ on or about 2 May 1969, without authority, fail to go at the time prescribed to his appointed place of duty (Reveille)
- 13 June 1969/ on or about 19 May 1969, without authority, absent himself from his unit, and did remain so absent until on or about 29 May 1969
- 20 June 1969/ on or about 19 June 1969, fail to report to the Orderly room to sign in for guard as directed by the duty roster (18 June 1969)

- 10 October 1969/ on or about 30 September 1969, without authority, absent himself from his unit, and did remain so absent until on or about 3 October 1969; he was reduced to private/E-1

c. On 16 December 1969, at Fort Gordon, GA, the applicant was found guilty by a special court-martial (SPCM) of:

- Being absent without leave (AWOL) from on or about 14 November 1969 until on or about 1 December 1969
- The court sentenced him to forfeiture of \$70.00 per month for four months and to be confined at hard labor for four months

d. On 30 December 1969, the convening authority approved and will be duly executed, but the execution of that portion thereof adjudging confinement at hard labor for four months was suspended for four months.

e. SPCM Order Number 40, issued by Headquarters Special Troops, Fort Gordon, GA on 19 January 1970, shows the approved sentence to confinement at hard labor for four months (suspended) was vacated. The unexecuted portion of the sentence to confinement at hard labor will be duly executed.

f. He received NJP on 22 January 1970, for on or about 17 January 1970, was AWOL and did remain so until on or about 19 January 1970.

g. SPCM Order Number 71, issued by US Army Correctional Training Facility, Fort Riley, KS on 10 February 1970, shows all unexecuted portions of sentence to forfeiture of pay was suspended until 25 March 1970, at which time, unless sooner vacated, the suspended portion of the sentence will be remitted without further action.

h. SPCM Order Number 154, issued by US Army Correctional Training Facility, Fort Riley, KS on 18 March 1970, shows all unexecuted portions of sentence to confinement at hard labor was suspended until 24 April 1970, at which time, unless sooner vacated, the suspended portion of the sentence will be remitted without further action.

i. On 13 August 1970, at Fort Sill, OK, the applicant was found guilty by a SPCM of:

- Being AWOL from on or about 1 June 1970 until on or about 11 June 1970
- Being AWOL from on or about 9 July 1970 until on or about 18 July 1970
- The court sentenced him to confinement at hard labor for 100 days, and forfeiture of \$70 per month for 4 months

j. On 14 August 1970, the convening authority approved the sentence and ordered it duly executed.

k. The complete facts and circumstances surrounding the applicant's discharge are not available for the Board to review. However, his record contains his acknowledgement of receipt of Board Proceedings against him under the provisions of Army Regulation (AR) 635-212 (Discharge Unfitness and Unsuitability), on 16 September 1970.

l. He was discharged under conditions other than honorable on 16 September 1970 under the provisions of AR 635-212 with a separation program number (SPN) 386 (Unfitness – an established pattern for shirking). His DD Form 214 (Report of Transfer or Discharge) shows he completed 1 year, 2 months, and 13 days net service this period. He had 164 days lost time from:

- 30 September 1969 – 30 October 1969
- 14 November 1969 – 30 December 1969
- 19 January 1970 – 24 March 1970
- 1 June 1970 – 10 June 1970
- 9 July 1970 – 15 September 1970

4. There is no evidence in the available records to show he applied to the Army Discharge Review Board for an upgrade of his character of service within that Board's 15-year statute of limitations.

5. In his previous request (AR20150019065) convened on 4 May 2017; after reviewing the application and all supporting documents, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned. The application submitted was denied by the ABCMR.

6. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination 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 short term of honorable service completed prior to the pattern of misconduct leading to the applicant's separation, as well as the lack of any mitigating evidence presented by the applicant for the misconduct, 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. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. 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.

2. AR 635-212 (Discharge Unfitness and Unsuitability) in effect at the time, sets forth the basic authority for separating enlisted personnel for reasons of unfitness or unsuitability. Paragraph 6 (Applicability), subparagraph a (Unfitness) states an individual is subject to separation under the provisions of this regulation when one or more of the listed conditions exist. Included on this list is an established pattern for shirking.

3. AR 635-200 (Personnel Separations - Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

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

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

4. AR 635-5 (Personnel Separations – Separation Documents) prescribes the separation documents that will be furnished each individual who is separated from the Army. It shows SPN 386 Unfitness – an established pattern for shirking.

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/NRs) 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 based on equity, injustice, or clemency grounds, BCM/NRs 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//