

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 April 2025

DOCKET NUMBER: AR20240010675

APPLICANT REQUESTS:

- upgrade of his under honorable conditions (general) discharge for the periods ending 30 March 1971 and 18 October 1974
- narrative reason for separation be changed to show "Secretarial Authority"
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record), 15 June 2024
- Legal Brief, 20 June 2024
- Self-authored statement
- documents from Official Military Personnel File (OMPF) (43)
- Awards and Certificates (31)
- Standard Form 50 (Notification of Personnel Action) (10)

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 describes his enlistment, an incident of his ear drums bursting at a firing range, his basic training graduation, and going absent without leave (AWOL) wherein he stated his wife was pregnant and having problems. While AWOL he remembers being arrested and charged with desertion, his special court martial, and his discharge.
 - a. After his discharge, he was unable to find employment, but eventually became a butcher/meatcutter. He went back into the Army because of a lack of monetary income and benefits. At his duty station he became depressed and told his leadership about all of his issues and his first enlistment, this led to his second discharge.

b. His life after his second discharge, he worked numerous positions from a meat and poultry inspector to seafood manager, and he reenlisted in 1990 in the Army Reserve. He spent a tour in Korea and was discharged in 1994. He worked with the Department of Defense Commissary for over 23 years, with retirement in 2010. He is a member of the Veterans of Foreign Wars and a Master Mason.

3. Counsel reiterates the applicant's self-authored statement, details his military service, his spouse's pregnancy issues, AWOL time, court-martial, discharge, and his second enlistment. He described the applicant's life post discharge specifically addressing the numerous accolades in his career. Counsel argues the applicant's discharge, in support of the Wilkie memorandum for upgrade of his discharge. Counsel argues the applicant's good conduct, his responsibility, and the length of time as reasons for the applicant's discharge upgrade.

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

a. The applicant enlisted in the Regular Army on 6 July 1970, for a 3-year period.

b. He accepted three non-judicial punishments, under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ):

(1) On 14 September 1970, for failing to report to his prescribed place of duty on or about 11 September 1970. His punishment imposed was 14 days extra duty and 14 days restriction.

(2) On 9 October 1970, for failure to repair on or about 7 October 1970. His punishment imposed was forfeiture of \$32.00 (suspended), 14 days extra duty, 14 days restriction, and seven days correctional custody (suspended).

(3) On 28 October 1970, for failure to repair on or about 28 October 1970. His punishment imposed was forfeiture of \$28.00, 14 days restriction, and 7 days corrective custody.

c. Court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ). The relevant DA Form 458 (Charge Sheet) is void in the applicant's official military personnel file.

d. Before a special court-martial on 15 January 1971, he was found guilty of AWOL on or about 1 November 1970 and remaining absent until on or about 5 November 1970. He was sentenced to forfeiture of \$25.00 per month for two months, to perform hard labor without confinement for 30 days, and reduction to the grade of E-1. The sentence was adjudged on 18 December 1970 and approved on 15 January 1971.

e. On 16 March 1971, his immediate commander notified him of the intent to recommend him for separation under the provisions of Army Regulation (AR) 635-212 (Personnel Separations - Discharge - Unfitness and Unsuitability).

f. He consulted with counsel and was advised of the basis for the contemplated action to separate him and of the rights available to him. He waived consideration, a personal appearance, and representing counsel by an administrative separation board and understood he may encounter prejudice in civilian life. Additionally, he elected not to submit a statement in his own behalf.

g. On 17 March 1971, his immediate commander formally recommended his separation under the provisions of AR 635-212, paragraph 6b (3). Further adding, the applicant's unsatisfactory performance attributed to his inability to expend effort constructively since entering the service.

h. The separation authority approved the recommended discharge on 26 March 1971 and directed the issuance of an DD Form 256A (Honorable Discharge Certificate).

i. Special Orders Number 67, dated 30 March 1971, shows his discharge is characterized as under honorable conditions (general).

j. He was discharged on 30 March 1971, under the provisions of AR 635-212, in the grade of E-2. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows his service is characterized as under honorable conditions (general), with separation program number 264 [Unsuitability]. He was credited with 8 months and 21 days of net active service with 4 days lost time.

k. A DD Form 215 (Correction to DD Form 214) shows correction to his reenlistment code from RE-4 to RE-3 and RE-3B.

l. He enlisted in the Regular Army on 6 May 1974, for a 4-year period.

m. On 8 October 1974, his immediate commander recommended him for separation under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), for unsuitability. Further adding, the applicant had previously enlisted and was administratively discharged, he provided false information pertaining to his dependent status and prior service both of which had precluded his reenlistment, stating the applicant fraudulently enlisted.

n. He consulted with counsel and was advised of the basis for the contemplated action to separate him and of the rights available to him. He waived consideration, a personal appearance, and representing counsel by an administrative separation board

and understood he may encounter prejudice in civilian life. Additionally, he elected not to submit a statement in his own behalf.

o. On 10 October 1974, the intermediate commander recommended approval. The separation authority approved the recommended separation for unsuitability, with issuance of DD Form 257A (General Discharge Certificate).

p. The applicant was discharged on 18 October 1974, under the provisions of AR 635-200, paragraph 13-5b (Separation for Unfitness or Unsuitability). His DD Form 214 (Report of Separation from Active Duty) shows his service was characterized as under honorable conditions (general) with separation program designator code JMJ and reenlistment code RE-3. He served 5 months and 13 days of net active service this period.

q. He was issued a DD Form 215 correcting his reenlistment code to RE-3 and RE-3C, his prior service from 0 to 8 months and 21 days, and his total active service to reflect 1 year, 2 months, and 5 days.

5. The applicant and his counsel additionally provide 43 pages from his OMPF, ranging from enlistment contracts, discharge documents, and his career in 1991. Approximately 31 accolades from his civilian career varying from his 25 years of service recognition, thank you letters for his hard work and achievements, letters of commendation and appreciation, certificates of appreciation and achievements, and training certificates.

6. 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.

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 and the reason for separation. The applicant was separated for unsuitability. The Board found no error or injustice in the designated character of service and narrative reason for separation assigned during separation processing. The Board noted the applicant's long career with the Defense Commissary Agency; however, determined the facts and circumstances of his discharge remained unchanged.

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:

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.

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. Army Regulation 635-5 (Personnel Separations - Separation Documents), in effect at the time, prescribes policies and procedures for the completion of the DD Form 214. Additionally, it identifies individual program numbers and shows the authority and associated reasons for each Separation Program Number (SPN).
 - a. An SPN is a number used in statistical accounting to represent the specific authority and reason for separation. SPNs are an integral part of the authority for separation shown in orders and on the DD Form 214.
 - b. For SPN 264 it states the authority is Army Regulation 635-212, and the reason is unsuitability due to a character and behavior disorder (emphasis added).
4. Army Regulation 635-5-1 (Separation Program Designator Codes) provides the specific authorities, reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. Separation code "JMJ" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, for unsuitability – apathy, defective attitude or inability to expend effort constructively.
5. 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.

6. Army Regulation 635-212 (Personnel Separations – Discharge for Unfitness or Unsuitability) then in effect, set forth the policy and procedures for administrative separation of enlisted personnel for unfitness and unsuitability. Paragraph 6b provided that an individual was subject to separation for unsuitability when one or more of the following conditions existed: (1) inaptitude; (2) character and behavior disorders; (3) apathy (lack of appropriate interest, defective attitudes, and inability to expend effort constructively); (4) alcoholism; (5) enuresis; and (6) homosexuality (Class III - evidenced homosexual tendencies, desires, or interest, but was without overt homosexual acts). When separation for unsuitability was warranted, an honorable or general discharge was issued as determined by the separation authority based upon the individual's entire record.

7. 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//