

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 May 2025

DOCKET NUMBER: AR20240010778

APPLICANT REQUESTS:

- upgrade of his under conditions other than honorable characterization of service
- a personal appearance hearing before the Board (via video/telephone)

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

DD Form 149 (Application for Correction of Military Record), 7 October 2024

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 he was put in a bad situation by fellow members of the military. He was implicated as co-conspirator for robbery by a fellow Soldier in an effort to have his criminal sentence reduced. He had no interaction with the other Soldiers involved other than having a beer with them at a club.
3. He was inducted into the Army of the United States on 30 January 1969.
4. His DA Form 20 (Enlisted Qualification Record) shows in:
 - a. item 38 (Record of Assignments):
 - 1 August 1969 through 7 October 1969– Patient– Military Health Center, General Leonard Wood Army Hospital, Fort Leonard Wood, MO
 - 8 October 1969 through 13 October 1969 – Absent Without Leave (AWOL)
 - 14 October 1969 3 November 1969– Patient– Military Health Center, General Leonard Wood Army Hospital, Fort Leonard Wood, MO
 - 4 November 1969 through 2 May 1972 – Confined by Civilian Authorities

b. item 42 (Remarks) shows the applicant was arrested on 4 November 1969 and charged with armed robbery. He was tried and convicted on 16 April 1970 in circuit court in Pulaski, CO and sentenced to eight years of confinement.

5. The applicant's record did not contain, and he did not provide evidence of a separation packet, therefore the complete circumstances pertaining to the applicant's discharge are not available for the Board to review.

6. His DD Form 214 (Armed Forces of the United States Report of Transfer of Discharge) shows he was discharged in the rank/grade of private/E-1 on 1 March 1972 under the provisions of Army Regulation 635-206 (Personnel Separations - Discharge - Misconduct - Fraudulent Entry, Conviction by Civil Court, and AWOL or Desertion. He completed 7 months and 13 days of net active service with lost time from 4 May 1970 to 3 May 1972. His service was characterized as under conditions other than honorable. He was issued the separation program number "284" and the reenlistment code "RE-4". Item 24 (Decorations, Medals, Badges, Commendations, Citation and Campaign Ribbons Awarded or Authorized), did not list any awards or medals.

7. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge processing within that Board's 15-year statute of limitations.

8. Regulatory guidance, in effect at the time, provided for the elimination of enlisted personnel for misconduct by reason of fraudulent entry into the service, conviction by civil court, and absence without leave or desertion. An under other than honorable conditions discharge was normally considered appropriate.

9. 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:

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 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. Upon review of the applicant's petition and available military records, the Board determined there was insufficient evidence of in-service mitigating factors to warrant an upgrade of the applicant's under other than honorable conditions discharge. The Board noted that the applicant did not provide post-service achievements or character letters of support for clemency. Given the nature of his misconduct, the lack of mitigating factors, and the

absence of supporting documentation, the Board found no basis to upgrade his discharge. Based on the preponderance of evidence and applicable regulatory guidance, the Board denied relief.

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
: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. 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 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.
3. AR 635-206, in effect at the time, provided the authority for the administrative separation or retention of enlisted personnel who had committed an act and or acts of misconduct. Section VI of that regulation prescribed the standards and procedures for processing cases of individuals who, during their current term of active military service, had been convicted by a civil court. An undesirable discharge was normally considered appropriate for members separating under this provision of the regulation; however, the separation authority could issue an honorable or a general discharge if warranted by the member's overall record of service.
4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post-Traumatic Stress Disorder; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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//