

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2025

DOCKET NUMBER: AR20240010935

APPLICANT REQUESTS: his under other than honorable discharge be upgraded to honorable

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record)

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 discharged for indebtedness. He purchased a ring while stationed in New Jersey and was later sent to Germany. He forgot to update the payment plan and when it caught up to his superiors in Germany, he was not given the opportunity to update the payment plan or catch up on the payments. He was simply discharged. This is inequitable to what his honorable service deserved.
3. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 21 December 1971 for a period of three years.
  - b. On 11 July 1972, he was convicted by a summary court-martial of the charge and its one specification of being AWOL from on or about 19 May 1972 to on or about 30 June 1972. The court sentenced him to confinement at hard labor for 30 days. (No previous convictions considered) The convening authority approved the sentence on 11 July 1972.
  - c. On 23 May 1974, the applicant was convicted by a special court-martial of the charge and its one specification of being AWOL from on or about 1 April 1974 to

10 April 1974. The court sentenced him to reduction to private E-1, to forfeit \$200 pay per month for 2 months; to be restricted to the limits of his billets, place of duty, mess hall, and chapel for 60 days (No previous convictions considered). The convening authority approved the sentence on 23 May 1974.

d. On 26 June 1974, his immediate commander recommended him for discharge under the provisions of AR 635-200 (Personnel Separations-Enlisted Personnel) paragraph 13-5a(5) (unfitness).

e. On 26 June 1974, he was advised by counsel of the basis for the contemplated action to separate him under chapter 13 and acknowledged the following:

- the basis for the contemplated action to accomplish his separation for unfitness under paragraph 13-5a(5)
- he waived consideration of his case by a board of officers and/or personal appearance before a board of officers
- statements on his own behalf are not submitted
- he waived representation by any counsel
- he waived a psychiatric examination in connection with this action
- he understood that he may expect to encounter substantial prejudice in civilian life in the event a general discharge under honorable conditions is issued to him
- he understood he may receive an undesirable discharge since he was being recommended for separation for unfitness and he further understood that as a result of the issuance of an undesirable discharge under conditions other than honorable, he may be ineligible for many or all benefits as a veteran under both Federal and State laws, and that he may encounter substantial prejudice in civilian life

f. On 28 June 1974, his intermediate commander concurred with the recommendation to discharge him under the provisions of paragraph 13-5a(5), AR 635-200.

g. On 16 July 1974, the separation authority directed discharge under the provisions of paragraph 13-5a(5), chapter 13, AR 635-200, for unfitness.

h. On 23 July 1974, the applicant was discharged under the provisions of AR 635-200, paragraph 13-5a (5) with a under other than honorable conditions characterization of service. He completed 2 years, 3 months, 26 days of net active service this period and had 97 days of lost time.

4. There is no indication in his records that he petitioned the Army Discharge Review Board for an upgrade of his discharge.
5. By regulation, enlisted Soldiers could be eliminated for unfitness or unsuitability. A Soldier could be separated for unsuitability whose record shows apathy (lack of appropriate interest), defective attitudes, and an inability to expend effort constructively.
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:

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 is insufficient evidence of in-service mitigating factors for the misconduct of multiple periods of AWOL. The applicant provided no post-service achievements or character letters of support that attest to his post honorable conduct that might have mitigated the misconduct that resulted in the discharge characterization.
2. Furthermore, the Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a honorable discharge. Therefore, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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) 635-200 (Personnel Separations – Enlisted Personnel) sets forth the policy and prescribes the procedures for the administrative separation of enlisted personnel.
  - a. Chapter 13, in effect at that time, applied to separation for unfitness and unsuitability. Paragraph 13-5(a) provided for separation for unfitness, which included frequent incidents of a discreditable nature, sexual perversion, drug abuse, an established pattern of shirking, failure to pay just debts, failure to support dependents, and homosexual acts. When separation for unfitness was warranted, an undesirable discharge was normally considered appropriate.
  - b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service has generally met standards of acceptable conduct and performance of duty for Army personnel.

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.

3. 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 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. 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 on the basis of 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. 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//