

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 May 2025

DOCKET NUMBER: AR20240010941

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions to under honorable conditions (general).

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

- DD Form 93 (Application for the Review of Discharge from the Armed Forces of the United States), 11 July 2024
- Self-authored statement, undated

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, at seventeen years old he entered military service alongside his brother who was deployed to Vietnam. Shortly after, his family was notified that his brother had gone missing during a firefight. This news left him overwhelmed with fear and depression. Concerned for his brother status and his mother's emotional well-being, he struggled to cope mentally. Though he wanted to serve honorably, the stress of possibly losing his brother, and the fear of dying himself, made it difficult for him to adjust and continue with his military service.
3. A review of the applicant's record shows:
  - a. He enlisted in the Regular Army on 15 November 1968.
  - b. Headquarters Special Processing Battalion (Provisional) Special Court-Martial Order Number 2660, 26 September 1969, shows the applicant was convicted by a special court-martial for, on or about 14 June 1969, without authority, absenting himself from his unit, and did remain absent until on or about 6 September 1969.

(1) His punishment was adjudged on 17 September 1969, included 45 days hard labor without confinement.

(2) On 26 September 1969, the sentence was approved a duly executed.

c. Headquarters Special Processing Battalion (Provisional) Special Court-Martial Order Number 41, 9 January 1970, shows the applicant was convicted by a special court-martial for absenting himself from his unit on two separate occasions, from on or about 14 October 1969 to on or about 8 November 1969, and from on or about 12 November 1969 to 16 December 1969.

(1) His punishment, adjudged on 5 January 1970, included confinement at hard labor for 59 days.

(2) On 9 January 1970, the sentence was approved a duly executed.

d. On 3 April 1970, he accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice, in that he did, on or about 26 March 1970, for absenting himself from his unit and did remain so absent until on or about 31 March 1970. His punishment included reduction to the rank/grade of private/E-1, forfeiture of \$15.00 per month for one month, and 14 days extra duty.

e. On 15 October 1970, the following court-martial charge was preferred against the applicant: one specification of violation of Article 86, in that he did, or about 5 March 1970, absent himself from his unit and did remain absent until 10 October 1970.

f. On 15 October 1970, the applicant underwent a medical examination for the purpose of separation. The examining official did not note any medical issues and found the applicant qualified for separation.

g. On 3 February 1971, the applicant voluntarily requested discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10. He understood that if the request was accepted, he could be discharged under other than honorable conditions and furnished an undesirable discharge certificate. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veteran's Administration, he could be deprived of his rights and benefits as a veteran under both Federal and State law and encounter substantial prejudice in civilian life because of an under other than honorable discharge.

h. On 4 February 1971, his immediate commander recommended approval of the applicant's request for discharge under the provisions of AR 635-200, chapter 10, and recommended he be issued an undesirable discharge certificate.

i. On 17 February 1971, the separation authority approved the recommended discharge, under the provisions of AR 635-200, chapter 10, and directed the applicant be reduced to the lowest enlisted grade and be issued an undesirable discharge certificate.

j. 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 17 February 1971, under the provisions of Army Regulation 635-200, for the good of the service. He completed 11 months and 13 days of net active service. His service was characterized as under conditions other than honorable. He was issued the separation program number "246" and the reenlistment code "RE-3". Item 24 (Decorations, Medals, Badges, Commendations, Citation and Campaign Ribbons Awarded or Authorized), shows he was awarded the National Defense Service Medal.

4. 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.

5. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

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, 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 applicant was charged with absenting himself from his unit on several occasions, the last period was from 5 March to 10 October 1970, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated character of service assigned by the commander. Based on a preponderance of the evidence, the Board concluded

that the characterization of service the applicant received upon separation was not in error or unjust.

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. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a Soldier who committed an offense or offenses, the punishment for which 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 Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. 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.

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

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

e. When a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade.

3. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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//