

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 June 2025

DOCKET NUMBER: AR20240011057

APPLICANT REQUESTS: upgrade of his under other than honorable conditions discharge.

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 a stupid kid, and he is now a patriot. He is proud of his country, and he would like to be proud of his service. He was wrong at the time. The person that went absent without leave (AWOL) with him received an honorable discharge although he was apprehended where he turned himself in.
3. The applicant enlisted in the Regular Army on 14 May 1979.
4. The applicant's record shows he departed AWOL on 8 June 1979 and remained AWOL until he was apprehended by civilian authorities and returned to military control on 20 July 1979.
5. On 31 July 1979, court-martial charges were preferred against the applicant for his AWOL offense.
6. On 31 July 1979, after consulting with legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, for the good of the service in lieu of trial by court-martial, due to the charges preferred against him under the Uniform Code of

Military Justice which authorized the imposition of a bad conduct or dishonorable discharge.

7. In his request, he acknowledged he was guilty of the charges against him which authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged that:

- he had not been subjected to any coercion whatsoever by any person with respect to his request for discharge
- he was advised of the facts which must be established by competent evidence beyond reasonable doubt to sustain a finding of guilty
- he could be discharged under other than honorable conditions and he could be ineligible for many or all benefits administered by the Veterans Administration
- he could be deprived of many or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he could expect to encounter substantial prejudice in civilian life by reason of discharge under other than honorable conditions

8. On 27 August 1979, the separation authority approved the applicant's request for discharge and directed issuance of an Under Other than Honorable Conditions Discharge Certificate. His DD Form 214 (Report of Separation from Active Service) confirms he was discharged on 3 September 1979 under the provisions of Army Regulation 635-200, chapter 10, for the good of the service in lieu of trial by court-martial, with his service characterized as under other than honorable conditions.

9. The Army Discharge Review Board denied the applicant's petition for an upgrade of his discharge on 14 September 1981.

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 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 charged with being AWOL from 8 June to 20 July 1979, 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 characterization of service. Therefore, the Board denied relief.

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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provides that a member who has committed an offense for which the authorized punishment includes a punitive discharge, may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses, the type of discharge normally given under the provisions of this chapter, the loss of Department of Veterans Affairs benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. Although a general discharge is authorized, an under other than honorable conditions discharge is normally considered appropriate.

b. Paragraph 3-7a provides that 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.

c. Paragraph 3-7b provides that 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 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 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.

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//