

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 June 2025

DOCKET NUMBER: AR20240011281

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

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Self-authored statement, undated
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the period ending 7 November 1973 with auxiliary documents
- Office of the Adjutant General and The Adjutant General Center, Washington, D.C. Letter, 6 July 1979

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 requests an upgrade in order to receive veteran benefits that have been withheld from him. In an undated self-authored statement, he states he was assigned to the infantry he made the decision not to go to Vietnam as he was the only son left home after his brother was lost to cancer. He deeply regrets the actions that led to his discharge. His discharge has significantly impacted his ability to earn and attain positions of higher earnings. He believes this was unjust as confirmed by historians and protestors over the past decades. A discharge would greatly improve his life.
3. He was inducted into the Army of the United States on 14 May 1968. After completion of initial entry training, he was awarded military occupational specialty 11B (Light Weapons Infantryman).
4. The DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ), 10 July 1968, shows he accepted nonjudicial punishment under

the provisions of Article 15, UCMJ, for being absent from his unit from on or about 5 July 1968 to on or about 9 July 1968 in violation of Article 86, UCMJ.

5. His limited records contain the following:

a. A signed, undated Statement of AWOL [absent without leave] from the applicant to the Commander, U.S. Army Personnel Control Facility, Fort Riley, KS noting:

- he was advised of his rights and understood those rights
- he did not request representation of military or civilian counsel
- he departed AWOL from U.S. Army Overseas Replacement Station, Fort Lewis, WA, on or about 11 October 1968 and remained absent unit on or about 10 October 1973 when he surrendered to military authorities

b. DA Form 3322-R (Report of Mental Status Evaluation), 11 October 1973, shows he was evaluated by a medical professional who determined he had no significant mental illness, meet medical retention standards, and was able to participate in separation proceedings.

6. On 18 October 1973, the Commander, Processing Company, Personnel Control Facility, Fort Riley, KS, advised him he was being recommended for separation under the provisions of Army Regulation 635-206 (Personnel Separations – Discharge – Misconduct (Fraudulent Entry, Conviction by Civil Court, and Absence without Leave or Desertion)). It was noted that in an interview the applicant cited the reasons for excessive AWOL were that he did not want to go to Vietnam due to concern with his personal safety.

7. On 19 October 1973 and 26 October 1973, respectively his intermediate and brigade commanders recommended his separation under the provisions of Army Regulation 635-206 with an undesirable discharge certificate.

8. He was discharged on 7 November 1973 under the provisions of Army Regulation 635-206. His DD Form 214 shows he completed 5 months and 23 days of total active service in the rank/grade of private/E-1 and his service was characterized as under other than honorable conditions. Item 30 (Remarks) of his DD Form 214 shows:

- 580 days lost: 11 October 1968 to 13 May 1970
- 1251 days lost subsequent to normal ETS [expiration term service]: 14 May 1970 to 9 October 1973 and 2 November 1973 to 7 November 1973

9. On 6 July 1979, the Army Discharge Review Board denied his request for an upgrade in the type and nature of his discharge. The Board determined he was properly and equitably discharged in accordance with the regulations in effect at the time.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. 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 absence without leave or desertion. The Board found no error or injustice in the separation proceedings and designated characterization of service. 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
:XX	:XX	:XX	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.

<p>X //signed//</p>

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 635-206 (Personnel Separations – Discharge – Misconduct (Fraudulent Entry, Conviction by Civil Court, and Absence without Leave or Desertion)), 15 July 1966, set forth the basic authority for the separation of enlisted personnel for misconduct (fraudulent entry into the service, conviction by civil court, and absence without leave or desertion). This regulation provided for the elimination of enlisted personnel for misconduct when they were initially convicted by civil authorities, or had action taken against them which was tantamount to a finding of guilty for an offense for which the maximum penalty under the UCMJ was death or confinement in excess of 1 year. An individual discharged for conviction by civil court normally would be furnished an Undesirable Discharge Certificate, except that an Honorable or General Discharge Certificate could be furnished if the individual being discharged had been awarded a personal decoration, or if warranted by the particular circumstances in the given case.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), 15 July 1966, set forth the basic authority for the separation of enlisted personnel.
 - a. An honorable discharge is a separation with honor. Issuance of an Honorable Discharge Certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude.
 - b. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. The recipient of a general discharge is normally a member whose military record and performance is satisfactory.
4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Service 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 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 grounds. This guidance does not mandate relief, but rather provides standards

and principles to guide BCM/NRs 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//