

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 November 2023

DOCKET NUMBER: AR20230004744

APPLICANT REQUESTS: reconsideration of his earlier request for an upgrade of his bad conduct discharge to a general, under honorable conditions characterization of service.

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

- DD Form 149 (Application for Correction of Military Record), 21 February 2023
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 24 July 1973
- letter of support, SSF____, 23 August 2022
- letter of support, Colonel (COL) Retired CDK____, 1 September 2022

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20110021150 on 8 May 2012.

2. The applicant states, in effect he is requesting an upgrade based on character references.

3. The applicant provided copies of:

a. His application and statement outlined above.

b. A letter of reference from COL (Ret) CDK____, in which he writes he has known the applicant for 15 years and his character is above reproach. They currently serve together in the (Veteran's Service Organization), in (City), Florida. He is dedicated to the organization and is extremely patriotic, honest, charitable, and faithful member of the community. He is consistently the first person to volunteer especially if it for helping others. During the letter author's 38 years of military experience with very high caliber. If he had the opportunity to work with the applicant there is no doubt he would be in he highest echelon of people.

c. A letter of reference from SSF__ in which she writes, she and the applicant have been married 14 years, had a belief in God, love of family, hobbies and spending time together. He would wake up at night shouting names of people and other words that she did not understand but would say is PTSD. They moved to be near her parents. He was making plans to retire due to health issues with high blood pressure, diabetes, sleep apnea, high cholesterol, arthritis, gout, hearing loss, and three heart attacks. He went to the Veterans Administration clinic and found he did not qualify for health benefits. She would appreciate the Board's consideration in upgrading his Bad Conduct discharge.

3. A review of the applicant's available service records shows:

a. On 29 May 1968, he obtained consent from his mother and legal guardian (DD Form 373) to enlist in the Army at age 17.

b. On 31 May 1968, he enlisted in the Regular Army for 3 years. He completed Basic Combat Training, he completed Advanced Individual Training, and he was awarded military occupational specialty 11E (Armor Crewman).

c. On an unspecified date he changed station to Baumholder, Germany.

d. On 28 April 1969, he was honorably discharged while stationed in Baumholder, Germany in order to reenlist. His DD Form 214 for this period shows he completed 10 months and 28 days of net service this period. His grade/pay grade was shown as Specialist4 (SP4) (Temporary). He was awarded the National Defense Service Medal, the Parachutist Badge, and the Marksman Marksmanship Qualification Badge with Rifle Bar (M-14).

e. On 29 April 1969, he reenlisted for 4 years.

f. On 3 November 1969, he accepted nonjudicial punishment for sleeping when being assigned Sentinel to post number 3, Baumholder, Germany. His punishment consisted of forfeiture of \$30.00 pay for 1 month and extra duties for 10 days. He did not appeal this punishment.

g. A DA Form 3826 (Notice of Return of US Army Member from Unauthorized Absence) shows he was reported absent without leave (AWOL) on 21 August 1972 from his unit at Headquarters and Headquarters Company, 326th Engineer Battalion, 101st Airborne Division, Fort Campbell; he was dropped from the rolls (DFR) on 21 September 1972; and he was apprehended by military authorities on 30 October 1972.

h. A charge sheet (DD Form 458) showing the charges and specification leading to a special court-martial is not contained in the available records.

i. Special Court Martial Order Number 16, issued by Headquarters (HQ), 101st Airborne Division (Airmobile), Fort Campbell, 15 February 1973, shows he was found guilty of four specifications of absencing himself from his unit, HHC, 326th Engineer Battalion (Airmobile) 101st Airborne Division, from on or about 3 July 1972 to 12 July 1972; 28 July 1972 to 1 August 1972; 7 August 1972 to 17 August 1972; and on or about 21 August 1972 to 30 October 1972. He was sentenced to be discharged from the service with a bad conduct discharge; to be confined at hard labor for 4 months; to forfeit \$192.00 pay per month for 4 months; and to be reduced to the grade of private/E-1. The sentence was adjudged on 15 December 1972.

j. On 15 February 1973, the Special Court-Martial Convening Authority approved only so much of the sentence as provided for a Bad Conduct Discharge and reduction to private/E-1. The service of the sentence to confinement at hard labor for 4 months was deferred on 20 December 1972 and the deferment was rescinded effective 15 February 1973. The record of trial was forwarded to the Judge Advocate General of the Army for review by a Court of Military Review.

k. On 15 February 1973, his request for excess leave was granted. He understood his record of trial would be reviewed by the Army Court of Military Review for legal sufficiency; he had the right to have a military or civilian lawyer represent him before the Army Court of Military Review; he could petition the U.S. Court of Military Appeals within 30 days after he received the decision of the Army Court of Military Review. He further understood he would not be entitled to pay or benefits while he was on excess leave.

l. His DA Form 20 (Enlisted Qualification Record) shows his periods of AWOL:

- 4 October 1971 to 4 November 1971, 31 days
- 22 November 1971 to 30 January 1972, 70 days
- 1 February 1972 to 10 March 1972, 38 days
- 13 March 1972 to 15 March 1972, 2 days
- 16 March 1972 to 30 March 1972, 14 days
- 3 July 1972 to 11 July 1972, 9 days
- 28 July 1972 to 31 July 1972, 4 days
- 7 August 1972 to 16 August 1972, 10 days
- 21 August 1972 to 20 September 1972, 31 days
- 21 September 1972 to 30 October 1972, 40 days

m. On 24 July 1973, he was discharged. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under the provisions of Army Regulation 635-200, Chapter 11 with a characterization of service under conditions other than honorable, he was issued a Bad Conduct Discharge Certificate. He was assigned separation program number of 292. He completed 3 years, 2 months, and 17 days of net active service with 215 days of time lost and 37 days of

excess leave from 14 March 1973 to 19 April 1972. He DD Form 214 for this period shows no awards and decorations.

4. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

5. On 8 May 2012 and in ABCMR Docket Number AR20110021150, the Board found no evidence of a probable error or injustice and noted there was insufficient basis for a correction of his records.

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 and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

a. The applicant's trial by a court-martial was warranted by the gravity of the offenses charged. His conviction and discharge were conducted in accordance with applicable laws and regulations and the discharge appropriately characterizes the misconduct for which he was convicted. He was discharged pursuant to an approved sentence of a court-martial. The appellate review was completed, and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to the conduct of the court-martial and the appellate review process, and the rights of the applicant were fully protected.

b. The applicant provided two statements in support of clemency determination. The authors speak of his involvement in a Veteran's Service Organization, volunteer efforts, and commitment to his family and community. However, the Board did not find these letters persuasive enough or outweigh the misconduct for which the court martial convicted him for. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 to amend the decision of the ABCMR set forth in Docket Number AR20110021150 on 8 May 2012.

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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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
2. By law (Title 10, U.S. Code §1552), court-martial convictions stand as adjudged or modified by appeal through the judicial process. This Board is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed. The ABCMR does not have authority to set aside a conviction by a court-martial.
3. Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Change 42 (14 December 1973), in effect at the time, provided the authority for the separation of enlisted personnel upon expiration of term of service, prior to ETS, and the criteria governing issuance of honorable, general, and undesirable certificates.
 - a. Chapter 1-9. Character of Service.
 - (1) Honorable Discharge. An honorable discharge is a separation with honor. Issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty during the member's current enlistment of current period of service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability and has been cooperative and conscientious in doing his assigned tasks, he may be furnished an honorable discharge.
 - (2) General Discharge. A general discharge is a separation from the Army under honorable conditions of an individual whose military record is not sufficiently meritorious to warrant an honorable discharge. A general discharge may be issued if an individual has been convicted by more than one special court-martial in the current enlistment period or obligated service or any extension thereof. The decision is discretionary; if there is evidence that the individual's military behavior has been proper over a reasonable period of time subsequent to the conviction(s), he may be considered for an honorable discharge.
 - (3) Undesirable Discharge. An undesirable discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for unfitness, misconduct, or for security reasons.

b. Chapter 11 provided that an enlisted person will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review and after such affirmed sentence has been ordered duly executed.

4. Army Regulation 635-5-1 (Separation Program Numbers) in effect at the time (20 August 1973), listed the specific authorities, regulatory, statutory, or other directives and reasons for separation from active duty, active duty for training, or full-time training duty. The SPN 292 corresponded to the authority Army Regulation 635-200, chapter 11, and the narrative reason "Other than desertion (court-martial)."

//NOTHING FOLLOWS//