

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 February 2024

DOCKET NUMBER: AR20230006284

APPLICANT REQUESTS:

- reconsideration of his previous request for an upgrade of his under conditions other than honorable discharge
- as a new request: correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), to show his assigned duty stations at Fort Dix, NJ, Fort Rucker, AL, Fort Sill, OK, Fort Benning, GA, and Fort Bragg, NC

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 149 (Application for Correction of Military Record)

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 AC82-09849 on 6 October 1982.
2. The applicant states no one has looked at his personnel file. A lot of his records were burned at the Army Records Center in St. Louis, MO. His DD Form 214 does not show the different forts he was at. He was denied his rights under the Uniform Code of Military Justice. Before his discharge, he was never offered counsel. Nor were there any charges against him. There was never anything dishonorable.
3. A fire destroyed approximately 18 million service members' records at the National Personnel Records Center in 1973. However, the applicant's service record contains sufficient documentation to conduct a fair and impartial review of this case.
4. The applicant enlisted in the Regular Army on 27 February 1970.
5. A memorandum from the Director, Department of Maintenance Training, dated

10 July 1970 shows the applicant was eliminated from the military occupational specialty (MOS) course 67A (Aircraft Mechanic) due to academic failure. He was recommended for field artillery, Upon the completion of advanced individual training, he was awarded MOS 13A (Field Artillery).

6. A DA Form 188 (Extract Copy of Morning Report), dated 29 January 1971 shows the applicant departed absent without leave (AWOL) on or about 7 December 1970. He surrendered to military authorities on 28 December 1970. He departed AWOL again on or about 30 December 1970 and was subsequently dropped from the rolls on 29 January 1971.

7. Court-martial charges were preferred against the applicant on 14 September 1971, for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL, from on or about 8 December 1970 until on or about 11 September 1971.

8. The applicant consulted with legal counsel on 16 September 1971.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of an undesirable discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge for the good of the service, under the provision of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10. In his request for discharge, He acknowledged making this request free of coercion. He further acknowledged understanding if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

c. The applicant was further advised that he could make a statement in his own behalf. He elected not to submit a statement.

9. The applicant underwent a pre-separation medical examination on 27 September 1971. The relevant Standard Form (SF) 89 (Report of Medical History) and corresponding SF Form 88 (Report of Medical Examination) show he was medically qualified for discharge.

10. The applicant's immediate and intermediate commanders recommended approval of the request for discharge for the good of the service, further recommending an undesirable discharged be issued.

11. The separation authority approved the applicant's request for discharge for the good of the service on 20 October 1971 and furnished an Undesirable Discharge Certificate.

12. The applicant was discharged on 1 November 1971 under the provisions of AR 635-200. His DD Form 214 shows his character of service was under conditions other than honorable with separation program number 246 and reenlistment code RE-4. Item 12 (Last Duty Assignment and Major Command) notes Personnel Control Facility, Headquarters Command, Fort Dix, NJ. He completed with 11 months and 4 days of active service with 274 days of lost time. He was awarded or authorized:

- National Defense Service Medal
- Parachute Badge
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)

13. The ABCMR reviewed the applicant's petition for an upgrade of his discharge on 6 October 1982. After careful consideration, the Board determined there was insufficient evidence to grant relief. His request for an upgrade of his characterization of service was denied.

14. Discharges under the provisions of Army Regulation 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An under other than honorable characterization of service is normally considered appropriate.

15. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

16. In reaching its determination, the Board can consider the applicants 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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board noted the applicant was charged with a commission of an offense punishable under the UCMJ with a punitive discharge. After being charged, he

consulted with counsel and requested discharge. The Board determined the characterization of service the applicant received upon separation was not in error or unjust.

2. Additionally, there is no provision to annotate each duty station assigned on the DD Form 214; therefore, the Board denied such relief as requested.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. 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 AC82-09849 on 6 October 1982.

2. 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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 (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 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses 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. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions 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.

2. Army Regulation 635-5 (Separation Documents), Section III, in effect at the time, provides instruction for the preparation and distribution of the DD Form 214. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. Paragraph 33 provides the instructions for the completion of Item 12 (Last Duty Assignment and Major Command), which states the entry will note the individual's current unit of assignment and the title of the major command having jurisdiction over that organization.

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 and Naval Records (BCM/NR) 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 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, 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//