

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 January 2023

DOCKET NUMBER: AR20230006480

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim), dated 27 February 2023

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 AR20160019214 on 25 March 2019.

2. As a new argument, the applicant states, in effect, he is truly sorry and regrets how he handled the situation. He served with honor and would like to apply for VA benefits related to his service in Vietnam.

3. The applicant enlisted in the Regular Army on 21 August 1967 for a 3-year period. He reenlisted on 30 November 1969. He served in the Republic of Vietnam from 25 January 1968 to 17 July 1970. The highest rank he attained was specialist/E-5.

4. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 3 March 1969 for being absent without leave (AWOL) from on or about 8 January 1969 until on or about 17 January 1969. His punishment consisted of reduction to private first class/E-3 and forfeiture of \$53.00 pay per month for two months.

5. Court-martial charges were preferred against the applicant on 30 June 1971, for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows he was charged with two specifications of being AWOL, from on or about 14 January 1970 until on or about 21 May 1970, and from on or about 27 May 1970 until on or about 11 June 1971.

6. The applicant consulted with legal counsel on 19 August 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 a UOTHC 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 his understanding that by requesting a discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable 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 VA, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

c. The applicant provided a statement in his own behalf, wherein he stated, in effect, his mother and father were having health issues. He went to work to support his family until he was apprehended. He needed a discharge to further support his family. He would not go back to duty with worries for his parents hanging over his head. He would continue to go AWOL until he was discharged. An undesirable discharge was better than a Federal discharge and confinement.

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

8. The separation authority approved the applicant's request for discharge for the good of the service on 27 August 1971 and further directed the issuance of a DD Form 258A (Undesirable Discharge Certificate).

9. The applicant was discharged on 3 September 1971 under the provisions of Army Regulation 635-200, for the good of the service. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) confirms his character of service was UOTHC with separation program number 246 and reenlistment code RE-3, RE-3B. He was credited with 2 years, 8 months, and 2 days of total active service with 516 days of lost time.

10. The Army Discharge Review Board (ADRB) reviewed the applicant's discharge on or about 17 October 1980 and determined he was properly and equitably discharged. His request for a change in his characterization of service was denied.

11. The ABCMR reviewed the applicant's petition for an upgrade of his discharge on 25 March 2019. 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.

12. 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. A UOTHC characterization of service is normally considered appropriate.

13. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

After reviewing the application, supporting documents, evidence found within the military record, the Board found relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, applicable regulatory guidance and published DoD guidance for liberal consideration and clemency in determining discharge upgrade requests. The Board considered the misconduct, court-martial charges and whether there was sufficient evidence of mitigating circumstances to weigh in favor of clemency determination. After due consideration of the request, and, in the absence of post-service achievements or letters of reference to weigh in support of a clemency determination, the Board determined the applicant was 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 Board determined 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.



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 635-200, 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. 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/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//