

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 January 2024

DOCKET NUMBER: AR20230007660

APPLICANT REQUESTS: reconsideration of his previous request(s) for an 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)
- Personal Statement
- Three (3) Character Reference Letters

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

- AR20150002796 on 29 September 2015
- AR20210007597 on 21 May 2021

2. The applicant states through life and the errors of his way, he has grown from a young man to an adult. His thought process has changed with the hardships of life. He has made a positive impact in life trying to create a better future for the next generation. He adds in a personal letter

a. He offers his sincerest apologies wrapped in his deepest remorse. Over 50 years ago, he enlisted and served in the Army from September 9, 1974 - February 2, 1976. While proudly serving on active duty during that time, he is really embarrassed to admit that he became seriously love-struck. It's true, he was so lovesick and blinded by love, he made an inconceivable decision to go on an unauthorized absence. He was young and naive, and he just did not know any better. Until one day suddenly, he had an unexpected reality check. He quickly realized that he was in love with my sweetheart, and he was also in love with being a soldier. He did not realize being so young and dumb, that he could not have them both under the given circumstances. Once he came to his senses, he realized the error of his ways. And he had to face the hard truth, and realized that although love is free, it cost him everything. He clearly understood that

being in love, or being committed to love is the right thing, but it had to be given, or received under the right circumstances. He immediately learned that pursuing love at the wrong time could have devastating consequences. And for that, he wants to apologize for his poor decision.

b. He was thinking immaturely, and without any direction, or guidance he made a foolish decision. He was so delusional. He had the notion to think just because he had joined the Army, he was a full grown man, and he was ready to be a husband and father. And with him being so called grown, he could make grown man decisions. He regrets the decisions he made then. He did not know the magnitude of the risk he was taking, and he didn't know how his lack of knowledge affected everything around him. He wants to apologize sincerely to his country, Army Troop family and his biological family. He takes full responsibility for his actions, and he apologized from the bottom of his heart. He asks for forgiveness. He has no other reasons for his selfish conduct during that time. Being so detached from reality back then, he was so blind thinking that his sweetheart and he would get married, build a happy life together, start a family and live happily ever after. He was a very gullible and immature young man; he really believed that he knew everything about love. He thought he knew everything about being a man in uniform, and I believed he knew everything about life. But he was so wrong on all 3 levels. He wants to apologize for his immaturity. Because he realized that it was not the uniform that made the man mature, but it was the mature man who made the uniform. He realized that a great man of valor carried himself with strength, dignity, and honor inside and outside of his uniform. And he always made the wisest decisions. I learned that there is a difference in making a wise decision and the best decision.

c. If he had a chance to do it all over again and rewrite the beginning of his story, he most certainly would by thinking things through, and asking mature men for wisdom and guidance. If he could rewrite the middle of his story, it would reflect that there were some ups and downs that challenged and changed him, but those experiences gave him many amazing opportunities to grow into a better man. A much wiser man.

d. Although it's been decades now, he acknowledges his wrong doings during that time. He is happy to say that he found true love in being the best husband and father, being the best servant in his church and community, and most of all he found true love within himself being a soldier and forever loving the Army. If he had to write the end of his story, he would want it to reflect that he has completely changed. He never stopped loving his country, the Army, or his family. He asks that the Board consider changing the status of his discharge.

3. Review of the applicant's service records shows:

a. The applicant enlisted in the Regular Army on 9 September 1974, for 3-year term at the age of 21. He completed training and was awarded military occupational specialty 76Y, Unit Supply/Armor Specialist.

b. Following completion of training, he was assigned to 547th Medical Company at Hunter Army Airfield/Fort Stewart, GA.

c. The applicant's DA Form 2-1 (Personnel Qualification Roster) shows in:

(1) Item 18 (Appointments and Reductions):

- Private (PVT) 19 August 1974
- Private/E-2 (PV2) 9 September 1974
- Private First Class (PFC) 6 May 1975
- PFC 13 June 1975 (A)
- PFC 22 June 1975 (A)
- PVT 19 January 1976

(2) In item 21 (Time Lost):

- 20 January 1975 to 29 January 1975, 9 days absent without leave (AWOL)
- 23 June 1975 to 4 August 1975, 43 days AWOL to Desertion
- 18 August 1975 to 26 August 1975, 9 days AWOL to Desertion
- 8 September 1975 to 10 September 1975, 3 days AWOL to Desertion
- 6 October 1975 to 15 December 1971, 71 days

d. The applicant's service record reveals an extensive history of being absent without leave (AWOL) or dropped from the rolls (DFR) as a deserter, from/to as follows:

- 23 June 1975, present for duty (PDY) to AWOL
- 22 July 1975, AWOL to DFR
- 3 August 1975, DFR to PDY (surrendered to military control)
- 18 August 1975, PDY to AWOL and immediately to DFR because he was awaiting disposition of his last AWOL.
- 27 August 1975, DFR to PDY, he surrendered to military control
- 8 September 1978, PDY to AWOL and immediately to DFR because he was awaiting disposition from his last two absences.
- 11 September 1975, DFR to PDY, he surrendered to military control
- 6 October 1975, PDY to AWOL and immediately to DFR because he was awaiting disposition of his previous absences
- 13 December 1975 from DFR to confined by military authorities (CMA)
- 16 December 1975 from CMA to PDY

d. On 23 September 1975, court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) shows he was charged with:

- one specification of AWOL from on or about 23 June 1975 to on or about 3 August 1975
- one specification of AWOL, from on or about 18 August 1975 to on or about 27 August 1975
- one specification of AWOL, from on or about 8 September 1975 to on or about 11 September 1975
- one specification of AWOL, from on or about 6 October 1975 to on or about 12 December 1975

e. His service record contains a DA Form 3975 (Military Police Report), dated 12 December 1975, that shows the applicant was AWOL on 6 October 1975, he was apprehended by civilian police on 12 December 1975, and he was returned to military control on 15 December 1975.

f. The applicant's service record is void of his separation packet including his request for voluntary discharge and the separation authority's approval memorandum. However, his DD Form 214 (Report of Separation from Active Duty) shows was discharged on 2 February 1976 under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel) chapter 10, conduct triable by court-martial (Separation Code KFS, Reentry Code 3/3B) and his service was characterized as under other than honorable conditions. He completed 1 year, and 8 days of his 3-year contractual obligation and he had a total of 136 days lost time.

4. There is no indication he petitioned the Army Discharge Review Board for a review of his discharge within that board's 15-year statute of limitations.

5. On 29 September 2015, the Board considered his request for an upgrade of his discharge. The Board stated:

a. His records show he was charged with three specifications of being AWOL and was AWOL on one additional occasion totaling 136 days of lost time. These are offenses punishable under the UCMJ. with a punitive discharge. The complete facts and circumstances pertaining to his discharge are not available for review. It is incumbent upon the applicant to provide a compelling argument supported by corroborating documentation to show his records are in need of correction based on an injustice or inequity. In the absence of such evidence, administrative regularity is presumed regarding his administrative discharge.

b. Although the applicant claims to have been unable to receive assistance for his marital problems as well as his drug and alcohol abuse, there is no evidence of record,

and he has not provided any showing he sought and was denied assistance. Discharges under the provisions of AR 635-200, chapter 10, are voluntary requests for discharge in lieu of trial by court-martial. There is no evidence indicating he was improperly and equitably discharged in accordance with the regulations in effect at the time, all requirements of law and regulations were not met, or his rights were not fully protected throughout the separation process. Further, his discharge accurately reflects his overall record of service.

c. Based on his record of indiscipline, his service clearly did not meet the standards of acceptable conduct and performance of duty for Army personnel. Therefore, there is no basis for granting him an honorable or a general discharge.

6. On 21 May 2021, the Board reconsidered the applicant's request for an upgrade of his discharge. The Board carefully considered the applicant's request, supporting documents, evidence in the records and published DoD guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors for the misconduct and the applicant provided no evidence of post-service achievements or letters of support to weigh a clemency determination. 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. After reviewing the application and all supporting documents, the Board found that relief was not warranted.

7. The applicant provides with his current application three character reference letters from:

a. ██████ colleague, and manager, who has known the applicant for nearly 15 years. He states he admires the applicant's loyalty and genuine concern for others. The applicant is honest and trustworthy. He is always willing to go above and beyond what is expected of him. He is respectful of his superiors and gets along well with his co-workers. During the time they worked together, he was often given additional responsibilities and assumed a leadership role while encouraging others on his team. Many of the processes that he helped create are still being used and many of the people that he mentored continue to work.

b. ██████ has known the applicant for more than 10 years. He met him through a family member. He has mentored him and other young men in Perry, GA. He brings a gift to listen and give honest options to help people. He is a great husband, dad, and granddad. The author admires his way to take care of his family and give to others. He has helped start up events to raise money for the youth and other organizations in their neighborhood.

c. ██████ states he has known the applicant over fifty years. They go all the way back to the time they were in grade school. He has always been honest, and he does not have a reason to question his character. The applicant has been active in the community. He coached in city recreation and worked well with the young people in the community. He is also a long-time member of [Name of] Church in [City], Georgia.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was partially 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 and record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

a. The applicant was charged with commission of an offense punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry and under other than honorable conditions discharge. The Board found no error or injustice.

b. The applicant, however, provides several letters of support, wherein family members and/or friends, and co-workers provided very favorable comments regarding his character, work ethic, and devotion to his family and community. Based on his post service standing in his community, the Board determined although his service clearly did not rise to the level of an honorable characterization; however, a general, under honorable conditions discharge is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further determined no change to the narrative reason for separation or corresponding Separation and RE Codes is warranted.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:            :            :            GRANT FULL RELIEF

■           ■           ■           GRANT PARTIAL RELIEF

:            :            :            GRANT FORMAL HEARING

:            :            :            DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant amendment of the ABCMR's decision in Dockets Number AR20150002796 on 29 September 2015 and AR20210007597 on 21 May 2021. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing him a DD Form 214 for the period ending 2 February 1976 showing his character of service as General, Under Honorable Conditions.

- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an honorable characterization of service.

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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 (AR) 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides 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.

a. Paragraph 3-7a states 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.

b. Paragraph 3-7b states 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/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. 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 based on 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//