

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2024

DOCKET NUMBER: AR20230008444

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:

- Request for reconsideration, dated 26 April 2023
- letter, from applicant to Veterans Administration, undated
- letter, Army Board for Correction of Military Record (ABCMR), dated 16 November 2022

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's case by the ABCMR in Docket Numbers AR20110000141 on 7 July 2011 and AR20220002669 on 19 October 2022.

2. As a new argument, the applicant states, in effect:

a. At the time of his discharge, a under honorable conditions (general) discharge did not exist. It did not come into effect until 1979. There is substantial doubt that his misconduct met the regulatory guidelines for a UOTHC discharge. Therefore, his status should be upgraded.

b. He felt harassed towards the end of his career and retaliated the only way he knew how. He was discharged three months prior to his expiration term of service. The disciplinary action he received was for being young and undisciplined. He takes full responsibility for his actions. However, those actions did not warrant a UOTHC discharge.

c. A general discharge is a discharge motivated by minimal misconduct or a failure to adapt to the military environment. A servicemember may show exemplary behavior in most areas but undergo nonjudicial punishment for failure to maintain physical standards, failure to meet professional qualification requirements, or other punishable offenses that don't break civilian laws.

d. A UOTHC discharge is the most severe administrative discharge for Soldiers who have committed offenses punishable under the Uniform Code of Military Justice, such as security violations, assault, adultery, the use of violence, and drug possession or alcohol abuse.

3. The applicant enlisted in the Regular Army on 8 June 1973, for a 3-year period. Upon the completion of initial entry training, he was awarded military occupational specialty 76Y (Unit Supply Specialist). The highest rank he attained was private first class/E-3.

4. The applicant accepted non-judicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice for the following violations:

a. On 26 July 1974, for being absent without authority (AWOL), from on or about 1 July 1974 until on or about 23 July 1974. His punishment consisted of reduction to private/E-2, forfeiture of \$84.00 pay, extra duty for 14 days, and 14 days of restriction.

b. On 3 March 1975, for without authority, selling a cold weather coat, military property of the United States, of a value of \$20.60, to an unknown individual, at the Central Issue Facility, during the month of February 1975. His punishment consisted of reduction to private/E-2, forfeiture of \$100.00 pay per month for two months, extra duty for 14 days, and 30 days of restriction.

5. The applicant's commander initiated a Bar to Reenlistment on 19 March 1975. As reasons for the action, the commander cited the applicant's two episodes of nonjudicial punishment, periodic counseling, and apathetic attitude. The Bar to Reenlistment was approved on 31 March 1975.

6. The applicant accepted non-judicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice, on 4 August 1975, for failure to obey a lawful order to wear a white t-shirt under his duty uniform at all times, on or about 30 July 1975. His punishment consisted of forfeiture of \$25.00 pay.

7. The applicant received a DA Form 2166-4 (Enlisted Evaluation Report [EER]), dated 20 August 1975, wherein his rater stated, [the applicant] required constant supervision to accomplish the smallest task. He had been counseled repeatedly on his job performance and attitude, and he was being recommended for separation from service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13.

8. The applicant appealed the evaluation, stating, in effect, the EER was unfair. He did his work. His attitude was not what it should be because he just wanted out of the Army and requested a Chapter 13 three weeks ago. The contents of the evaluation were

mostly untrue. His morale was low because of a noncommissioned officer who went out of his way to harass him.

9. The applicant's platoon sergeant provided an additional DA Form 2496 (Disposition Form), dated 21 August 1975, wherein he stated, in pertinent part, he could not honestly rate [the applicant] any higher than he did. He also referenced the numerous occasions the applicant was counseled by his first line leadership.

10. The applicant accepted non-judicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice, on 24 September 1975, for failing to go at the time prescribed to his appointed place of duty, on or about 16 September 1975. His punishment consisted of reduction to the rank of private/E-1, forfeiture of \$75.00 pay, seven days of extra duty, and seven days of restriction.

11. The applicant underwent a medical examination on 2 December 1975. A Standard Form (SF) 93 (Report of Medical History) and the corresponding SF 88 (Report of Medical Examination) show the applicant reported being in fair health, and the examining provider determined he was medically qualified for separation.

12. On that same date, he underwent a mental health evaluation. The examining provider noted there was no impression of significant mental illness, and the applicant had the mental capacity to understand and participate in board proceedings.

13. The applicant's service record is void of the complete facts and circumstances surrounding his discharge processing. However, his DD Form 214 (Report of Separation from Active Duty) confirms he was discharged on 13 February 1976 under the provisions of Army Regulation 635-200, paragraph 13-5a (1). His service was characterized as UOTHC. He was credited with 2 years, 7 months, and 14 days of net active service, with 22 days of lost time.

14. The ABCMR considered the applicant's request for an upgrade of his characterization of service on 7 July 2011. After careful consideration, the Board determined the type of discharge was appropriate considering all of the facts available. His request for relief was denied.

15. The ABCMR reconsidered his request for an upgrade of his characterization of service on 19 October 2022. After reviewing the application, all supporting documents, and the evidence within the military record, the Board determined there was insufficient evidence of in-service mitigating factors for the misconduct and denied relief.

16. The applicant provides the following:

a. In an additional undated letter to the “Veterans Administration,” the applicant states, in effect, he was sincere about making the Army his career. He felt he performed at a high level. He was never in trouble until after a change of command, and things changed in the company and battalion. He went AWOL after being denied leave. He was homesick. After visiting his folks, he turned himself in. He states his further episodes of misconduct were a “losing battle.” It was a horrific time in his life. He regrets not being given the opportunity to finish his time. His life after the military was hell. However, he went to school, became a machinist, and volunteers at the local Veteran Services Office.

b. A copy of the ABCMR decision letter, dated 16 November 2022, following the Board review of ABCMR Docket Number AR 20220002669.

17. Regulatory guidance provided for separation for unfitness, which included frequent incidents of a discreditable nature, sexual perversion, drug abuse, shirking, failure to pay just debts, failure to support dependents and homosexual acts. When separation for unfitness was warranted, an undesirable discharge was normally considered appropriate.

18. Army Regulation 635-200, dated 14 December 1973, in effect at the time, provided for a general discharge among the other characters of service.

19. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

#### BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, his bar to reenlistment, 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 and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined 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 that the overall merits of this case are insufficient as a basis to amend the decisions of the ABCMR set forth in Docket Numbers AR20110000141 on 7 July 2011 and AR20220002669 on 19 October 2022.

7/15/2024

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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body.

2. Army Regulation 635-200, in effect at the time of the applicant's service, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 1-9d stated 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 1-9e stated a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 1-9f stated an undesirable discharge is an administrative separation under conditions other than honorable. It may be issued for unfitness, misconduct, homosexuality, or for security reasons. When an undesirable discharge is authorized by regulation a member may be awarded either an honorable or general discharge if, during the period of service, the servicemember was awarded a personal decoration, or if warranted by the circumstances of a specific case.

d. Paragraph 13-5a (1), as then in effect, provided for separation for unfitness, which included frequent incidents of a discreditable nature with civil or military authorities. When separation for unfitness was warranted, an undesirable discharge was normally considered appropriate.

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/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, 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.

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//