

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 March 2024

DOCKET NUMBER: AR20230008731

APPLICANT REQUESTS: Reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general).

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Separation from Active Duty) (duplicate)
- Character Letters (two)

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 AR20050012561 on 2 May 2006.
2. The applicant states the discharge is unjust and he was discharged for unknown reasons. He never had any disciplinary actions towards him while in the Army. He was looking into what Department of Veterans Affairs (VA) benefits he was eligible for and was told he did not have a good discharge.
3. The applicant enlisted in the Regular Army on 5 February 1974 for 3 years. His military occupational specialty was 76Y (Unit Supply Specialist).
4. The applicant was absent without leave (AWOL) on 6 December 1974. His AWOL was changed to an extension of leave on 8 December 1974. He was present for duty (PDY) on 8 December 1974.
5. His status was changed from hospital to PDY on 26 April 1975.
6. A Military Police Report shows on 16 October 1975, the applicant was shot in his right foot by an unknown person. He was in a high state of intoxication and unable to answer questions. The applicant was treated and released. The bullet was still in his foot.

7. A Statement of Medical Examination and Duty Status, dated 17 October 1975 shows the applicant was shot after leaving a club and transported to the hospital by unknown persons.
8. The applicant was admitted to the hospital on or about 20 October 1975 and PDY on 30 October 1975. He was placed on convalescent leave on 31 October 1975 and PDY on 23 November 1975.
9. The Report of Investigation, Line of Duty and Misconduct Status, dated 9 January 1976, shows the applicant was shot by an unknown person and his injury occurred in the line of duty.
10. The applicant accepted non-judicial punishment (NJP), under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 20 January 1976 for without authority, failing to go at the time prescribed to his appointed place of duty on or about 13 January 1976. His punishment consisted of restriction and forfeiture of \$75.00 for one month.
11. The applicant was in civil confinement on 29 January 1976 and PDY on 30 January 1976. He was released without conviction.
12. The applicant received formal counseling between January and October 1976 for being late (on four occasions), absent from duty (twice), to improve his appearance, being a candidate for elimination from service (twice), for trying to remove government property, failure to be on time, sleeping on duty, missed formation,
13. The applicant accepted NJP, under the provisions of Article 15 of the UCMJ on:
  - 26 March 1976 for failing to go at the time prescribed to his appointed place of duty on or about 16 March 1976; his punishment consisted of reduction to E-2, forfeiture of \$75.00 for one month, and oral reprimand
  - 22 July 1976, for wrongfully using provoking words on or about 7 July 1976; his punishment consisted of forfeiture of \$25.00 for one month (suspended) and extra duty (suspended)
14. On 14 September 1976, Bell County Court, TX, placed the applicant on 6 months' probation for hindering a secured creditor.
15. Orders 610-57, dated 16 September 1976, issued by Headquarters, 1st Cavalry Division, Fort Hood, TX, reassigned the applicant as a rehabilitative transfer.
16. The applicant's company commander notified him on 21 October 1976, of his intent to initiate action to discharge him under the provisions of Army Regulation (AR) 635-200

(Personnel Separations-Enlisted Separations), Chapter 13, for misconduct. The commander stated the reason for the action was the applicant's frequent incidents of a discreditable nature with civil or military authorities.

17. The applicant consulted with counsel and acknowledged the proposed separation action under the provisions of AR 635-200, Chapter 13. He waived his right to have his case heard before a board of officers and he elected not to submit a statement in his own behalf. He acknowledged he understood he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him.

18. On 22 October 1976, the applicant's commander formally recommended he be discharged under the provisions of AR 635-200, Chapter 13, for misconduct. The commander noted, the applicant had been disciplined by his platoon sergeant, first sergeant and company commander for failure to repair, late to formation, insubordination, verbal assault on a female, and sleeping on guard duty. On 14 September 1976 he was convicted and was presently on probation. The applicant was transferred into the unit as a result of rehabilitative transfer and had failed to demonstrate his desire to improve.

19. A Mental Status Evaluation shows the applicant had no significant mental illness, was mentally responsible, able to distinguish right from wrong, able to adhere to the right, had the mental capacity to understand and participate in board proceedings and met retention standards.

20. The applicant's chain of command concurred with the recommended discharge for misconduct. However, the separation authority's approval memorandum is not available for review.

21. The applicant was discharged on 4 January 1977. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 13-5a (1), based on frequent acts of a discreditable nature with civil and military authorities. His characterization of service was UOTHC. He completed 2 years, 10 months, and 29 days of net active service this period, he had 1 day of lost time.

22. Regulatory guidance provides for separation for unfitness, which included frequent incidents of a discreditable nature. An UOTHC discharge is normally considered appropriate.

23. The applicant provides character letters that attest to his excellent character and strong work ethic. He was never reprimanded for negative or unprofessional behavior. He has a family and is actively involved in the community as a role model. He is a mentor who has helped many troubled young adults with his military discipline and

setting the standard for many others to follow. He continues to improve mentally even when being faced with health problems from his prior service. He has been an outstanding citizen for many years and is a great example of what the military can produce by leading by example.

24. On 2 May 2006, the ABCMR considered the applicant’s request for discharge upgrade. The Board determined that the overall merits of the case were insufficient as a basis for correction of the record.

25. On 10 February 2015, the applicant was informed that his request for review of discharge to the Army Discharge Review Board must be directed to the ABCMR for consideration. On 25 July 2018, the ABCMR notified the applicant that his application for reconsideration was administratively closed without action, due to a lack of new evidence.

26. In reaching its determination, the Board can consider the applicant’s petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency 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, 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 found the character letters provided by the applicant insufficient 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 decision of the ABCMR set forth in Docket Number AR20050012561 on 2 May 2006.

6/27/2024

X

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. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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. 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 13-5(a), as then in effect, 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.

d. When a soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade per AR 600-200, chapter 6, section IV.

2. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//