

IN THE CASE OF: ██████████

BOARD DATE: 6 March 2024

DOCKET NUMBER: AR20230008757

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions to under honorable conditions (general).

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

- DD Form 149 (Application for Correction of Military Record), 9 May 2023
- self-authored statement, 10 May 2023
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 2 September 1970

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 AR20170017742 on 10 June 2019.

2. The applicant states, in effect, he went absent without leave (AWOL) in 1969 and feels like it was the biggest mistake of his life.

a. He regrets doing this; however, he was scared, afraid, and petrified of being deployed to the Vietnam War. Since then, he has turned his life around and is a better person now than when he was young.

b. He worked at his job for 37 years and retired in 2012. He loved, cared for, and raised a family of 5 children and 7 grandchildren, and has been married to his spouse for 42 years. He has supported local Veterans with many regrets of his own selfish decisions, which lay heavy on his heart. His son went into the Army, and he could not be any prouder of his son's determination and deployment.

c. He feels he has successfully proven that he is a better person in all aspects of his life compared to who he was in 1969 and would appreciate a discharge upgrade.

3. The applicant enlisted in the Regular Army on 29 August 1969, for a period of 3 years. He was not awarded a military occupational specialty.

4. His DA Form 20 (Enlisted Qualification Record) shows while attending advanced individual training at Fort Jackson, South Carolina, he was dropped from the unit rolls (DFR).
5. On 28 January 1970, a commander's inquiry states the applicant did not give any indication of any type of trouble which might have caused him to take such drastic action, he went AWOL on or about 11 November 1969 and was DFR on 11 December 1969.
6. On 20 February 1970, a military police report shows the applicant was apprehended by civil authorities, where he was detained at the police station until his release to military control on 22 February 1970.
7. A DD Form 458 (Charge Sheet), dated 2 March 1970, shows court-martial charges were preferred against the applicant with one specification of AWOL from on or about 11 November 1969 until on or about 20 February 1970. An additional charge sheet was added to include one specification of being AWOL from on or about 9 August 1970 until on or about 12 August 1970, and one specification of breaking restriction on or about 9 August 1970.
8. Before a special court-martial on 6 March 1970, the applicant was arraigned and tried for violation of the Uniform Code of Military Justice, for being AWOL from on or about 11 November 1969 until on or about 20 February 1970. He pled and was found guilty, and he was sentenced to forfeiture of \$50.00 pay per month for 3 months. On 9 March 1970, the sentence was approved and ordered to be duly executed.
9. The applicant consulted with legal counsel on 4 August 1970. After consulting with counsel, the applicant executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service in Lieu of Trial by Court-Martial). He acknowledged his understanding of the following in his request:
 - a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.
 - b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the Uniform Code of Military Justice, of the possible effects of an undesirable discharge, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected not to submit a statement in his own behalf.

10. The applicant's separation packet is not available for review; however, his DD Form 214 shows he was discharged on 2 September 1970, under the provisions of AR 635-200, Chapter 10, for the good of the service, in the grade of E-1. His service was characterized as under conditions other than honorable. He received separation program number 246 and reentry code RE-3B. He completed 4 months and 14 days of net active service with 240 days lost time. He was awarded the National Defense Service Medal.

11. The ABCMR reviewed the applicant's request for an upgrade of his characterization of service on 10 June 2019. After careful consideration, the Board determined relief was not warranted. Stating based upon the short term of service completed prior to the lengthy AWOL offense, the Board concluded that the characterization of service received at the time of separation was appropriate.

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. An under other than honorable conditions characterization of service is normally considered appropriate.

13. 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:

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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of going AWOL during his advance individual training (AIT). The Board noted the post service achievements from his job of 37 years and raising a family, although the applicant provided no character letters of support for the Board to weigh a clemency determination.

2. Furthermore, the Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a general under honorable conditions discharge. Therefore, the Board denied relief.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction be completed to more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found 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 AR20170017742 on 10 June 2019.

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CHAIRPERSON

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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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, ending 2 September 1970, item 3 reads XX5-XX-XXXX, which is listed incorrectly. Amend the DD Form 214 to read item 3 as XX4-XX-XXXX.

REFERENCES:

1. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

2. AR 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. 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. 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.

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, 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//