

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2024

DOCKET NUMBER: AR20230009495

APPLICANT REQUESTS: in effect, reconsideration of his previous request to upgrade his already-upgraded general discharge to an honorable discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Congressional correspondence and Privacy Act Release Form
- Reissued DD Form 214 (Report of Separation and Record of Service) (General Discharge)
- DD Form 215, Correction to DD Form 214
- Department of Veterans Affairs (VA) Rating Decision, 17 August 2022

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 AR2001061569 on 19 September 2002.

2. The applicant states he was court-martialed when technically he was out of the service. This led to the Army finding him guilty on a bad conduct discharge. As a result, he was forced to resign with an undesirable discharge. He submitted an appeal, but they only gave him a correction to his DD Form 214 to a general discharge. His disability for Agent Orange is 10% and should be increased. He was released from service with full PTSD (post-traumatic stress disorder) but his percentage for disability keeps going up and down.

3. The applicant refers to his service-connected disability (disability for Agent Orange is 10% and should be increased; and his percentage for disability keeps going up and down). The applicant is advised that questions related to VA benefits, service-connection, and disability percentages should be addressed to the VA. The ABCMR corrects military records and has no authority over VA decisions.

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

a. He enlisted in the Regular Army on 15 December 1967. He held military occupational specialty 11E, Armor Crewman.

b. He served in Germany from 15 May to 5 November 1968. While in Germany, he accepted nonjudicial punishment (NJP) under Article 15 for being absent from his place of duty on 24 May 1968.

c. The applicant served in Vietnam from 24 February 1969 to 23 January 1970. Following his Vietnam tour, he was reassigned to Fort Knox, KY.:

d. On 20 April 1970, he accepted NJP under Article 15 for being absent without leave (AWOL) from 13 March to 7 April 1970.

e. On 12 March 1971, at Fort Knox, he was convicted by a special court-martial of two specifications of being AWOL from 20 July 1970 to 12 November 1970 and from 28 November 1970 to 17 February 1971. The court sentenced him to confinement at hard labor for 3 months and forfeiture of pay. The convening authority approved the sentence on 24 March 1971 but suspended the confinement for 3 months.

f. On 3 May 1972, at Fort Knox, he was again convicted by a special court-martial of one specification of being AWOL from 21 March 1971 to 21 March 1972. The court sentenced him to confinement at hard labor for 3 months and forfeiture of pay. The convening authority approved the sentence on 10 May 1972.

g. On 9 January 1973, at Fort Meade, MD, he was convicted a third time by a special court-martial of one specification of being AWOL from 8 August to 11 December 1972. The court sentenced him to confinement at hard labor for 4 months, and reduction to private/E-1. The convening authority approved the sentence on 1 August 1974.

h. On 17 May 1974, he was convicted by a special court-martial of three specifications of AWOL from 20 May to 3 August 1973, 20 August to 10 November 1973, and 26 December 1973 to 2 April 1974. The court sentenced him a bad conduct discharge. The convening authority approved the sentence and except for the bad conduct discharge ordered it executed. The record of trial was forwarded for appellate review.

i. On 14 February 1975, the U.S. Court of Military Appeals affirmed the finding of guilty and the sentence. Additionally, on 2 June 1975, the U.S. Court of Military Appeals granted the applicant's petition for review.

j. Special Court-Martial Order Number 46, issued on 23 January 1976, set aside the finding of guilty and the bad conduct discharge, and authorized and ordered a re-hearing before another court-martial.

k. On 28 January 1976, after consulting with counsel, the applicant voluntarily requested discharge, in accordance with chapter 10 (Discharge for the Good of the Service), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). In his request, he acknowledged that no one had subjected him to coercion to request this separation. Additionally, the applicant elected not to submit written statements in his own behalf. He understood that:

- he may request discharge for the good of the service because charges have been preferred against him under the Uniform Code of Military Justice which authorizes the imposition of a bad conduct or dishonorable discharge
- this request is of his own free will and have not been subjected to any coercion whatsoever by any person and he has been advised of the implications that are attached to it
- by submitting this request for discharge, he acknowledges that he is guilty of the charge(s) against me or of (a) lesser included offense(s) therein contained which also authorize(s) the imposition of a bad conduct or dishonorable discharge.
- he hereby states that under no circumstances does he desire further rehabilitation, for he has no desire to perform further military service

l. The applicant's company and battalion commanders recommended that he receive a General Discharge Certificate. However, the separation authority approved the applicant's separation request and directed his undesirable discharge under other than honorable conditions.

m. Accordingly, the applicant was discharged on 27 April 1976. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under the provisions of chapter 10 of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) with an under other than honorable conditions discharge. He completed 3 years, 4 months and 20 days of active service and he had 141 days of lost time under Title 10, U.S. Code, section 972, and 1,673 days of lost time subsequent to normal separation date. He was awarded or authorized:

- National Defense Service Medal
- Vietnam Service Medal
- Bronze Star Medal with V Device
- Army Commendation Medal
- Purple Heart
- Vietnam Campaign Medal

- Marksman Badge with Rifle Bar

5. On 24 May 1979, the Army Discharge Review Board (ADRB) reviewed his discharge and granted relief in the form of upgrading his discharge to general, under honorable conditions. A majority of the ADRB members believed his Vietnam tour and awards of the Bronze Star Medal with V Device, Purple Heart, and Army Commendation Medal warrant partial relief to a general discharge. A minority member could not excuse the applicant's serious misconduct consisting of 2 NJPs and 3 convictions by a court-martial.

6. The applicant's DD Form 214 was voided. He was reissued a new DD Form 214 reflective of his "general, under honorable conditions" character of service.

7. On 19 September 2002, the ABCMR considered the applicant's request to upgrade his already-upgraded discharge. The Board stated:

a. After a careful review of the available evidence, and lacking any compelling reasons to the contrary, the Board finds the applicant's meritorious combat service, as evidenced by his earning the Bronze Star Medal for Valor, the Purple Heart, and the Army Commendation Medal mitigates his military related misconduct sufficiently to warrant an upgrade of his discharge and affirmation of the previous ADRB upgrade decision.

b. Therefore, while not condoning the applicant's excessive periods of AWOL and lost time, but consistent with the ADRB's acceptance of applicant's explanation of his perceived adjustment disorder, applicant's experiences in multiple combat situations were "compelling circumstances" which, although not rising to the level of a defense, played a significant role in the applicant's subsequent inability to successfully reintegrate into a garrison environment and contributed to his poor judgment in going AWOL. Therefore, it would be unjust to further deny him entitlement to veteran's benefits.

8. On 10 June 2003, the applicant was issued a DD Form 215 that corrected his DD Form 214 by adding the following awards: Valorous Unit Award, 4 bronze service stars to be affixed to his Vietnam Service Medal, Republic of Vietnam Gallantry Cross with Pal, and Republic of Vietnam Civil Actions Honor Medal.

BOARD DISCUSSION:

1. 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.

2. A majority of 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, a majority of the Board determined the character of service the applicant received upon upgrade by the ADRB and later affirmed by the ABCMR is not in error or unjust.

3. The member in the minority found the applicant's service in Vietnam merits an additional upgrade. The member in the minority determined the applicant's character of service should be changed to honorable.

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 decision of the ABCMR set forth in Docket Number AR2001061569 on 19 September 2002.

12/19/2024
X [REDACTED] <hr/> CHAIRPERSON [REDACTED]

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 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. An honorable discharge was a separation with honor. Separation authorities were to conditions the issuance of an honorable discharge based upon proper military behavior and proficient duty performance. In addition, separation authorities could characterize a Soldier's service as honorable based on conduct ratings of at least "Good"; efficiency ratings of at least "Fair"; no general court-martial, and no more than one special court-martial conviction.

b. A general discharge was a separation from the Army under honorable conditions, where the Soldier's military record was not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 permitted a Soldier to request discharge for the good of the service when they had committed an offense or offenses which, under the UCMJ and the Manual for Courts-Martial, United States 1969 (Revised Edition), included a bad conduct or dishonorable discharge as a punishment. The Soldier could submit such a request at any time after court-martial charges were preferred. Once approved, an undesirable discharge was normally furnished, but the discharge authority could direct either an honorable or a general discharge, if warranted.

2. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 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. 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//