

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 July 2024

DOCKET NUMBER: AR20230011268

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his characterization of service from under other than honorable conditions to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 5 September 2023
- two self-authored statements
- Page 4 of DA Form 20 (Enlisted Qualification Record)
- Special Orders Number 51, 20 February 1975
- DD Form 214 (Report of Separation from Active Duty)0, 20 February 1975
- Congressional interest letter

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 AR20170002755 on 25 November 2019.

2. The applicant states, in effect, he was a very good Soldier and followed orders. He lived off post and he checked in every morning for duty and left when ordered. He was promised an honorable discharge when he signed out of service.

a. In a self-authored statement to the Board, he states, in effect, when he enlisted, they handcuffed a conscientious objector to him, when speaking to each other, he realized their views had not aligned. After their arrival, he heard the man was bleeding from his wrists. He helped him because he did not want to see another person die, although others around him did not help. After a few days, his drill instructors, told him because he had saved the man's life, he was to help him find something and somewhere to work. He helped the man work with the Chaplain, after he noticed the man reading his bible.

b. He knows he was a good Soldier; he was promoted in less than two years to E-4, he received favorable inspections, and was "put in for a stripe", and worked with Soldiers returning home from Vietnam. An instance, which led to his discharge, he was

in charge of escorting another Soldier to the stockade, although he had not wanted to escort the other Soldier, he did and received further orders to wait for the Commanding Officer to return, he followed his orders and further awaited instructions.

c. He ended up putting in some leave and after his leave was over, he went back to the stockade to receive his orders and was ordered to just go home. He knows he did the right thing by continuing to report in and await orders. He states he never was a deserter, and the Army was the best thing that happened to him. When he was discharged an Officer told him the incident would be expunged from his records after Vietnam was over, he waited, but he was never contacted.

d. He has worked for over 35 years and is not a liar nor a cheater. His children both serve, and he is proud of their service. He believes this is his last resort to try to resolve his request, as he is older now.

3. The applicant enlisted in the Regular Army on 5 April 1972, for a 3-year period. He was honorably discharged on 10 December 1972 for immediate reenlistment. He reenlisted on 11 December 1972, for an additional 3-year period.

4. His DA Form 20 (Enlisted Qualification Record) shows the highest rank he attained was specialist four/E-4. The applicant was reported as absent without leave (AWOL) from on or about 8 October 1974 to 21 October 1974 and from on or about 23 October 1974 to 5 January 1975.

5. Court-martial charges were preferred against the applicant, for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) is not available for review.

6. The applicant's service record is void of the complete facts and circumstances surrounding his discharge processing. However, Special Orders Number 51 show he was discharged under other than honorable conditions effective 20 February 1975.

7. The applicant's DD Form 214 shows he was discharged on 20 February 1975, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service), in the grade of E-1. His characterization of service was under other than honorable conditions with separation program designator code KFS [discharge in lieu of trial by court-martial] and reenlistment code RE-4. He was credited with 2 years, 11 months, and 12 days of net active service this period with 88 days of lost time.

8. 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 is normally considered appropriate.

9. Email correspondence from the Constituent Services, Retired Sergeant Major E.B.D., for U.S. Senator Ron Wyden of Oregon shows the applicant sought the assistance of his Congressional Representative in submitting his application to the Board.

10. The ABCMR reviewed the applicant's petition for an upgrade of his discharge on 25 November 2019. After careful consideration, the Board found the evidence presented did not demonstrate the existence of a probable error or injustice and determined the overall merits of the case were insufficient as a basis for correction of the applicant's records.

11. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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, available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of multiple periods of going AWOL. The applicant provided no character letters of support for the Board to weigh a clemency determination.

2. The Board considered the applicant's post service achievements and found his commitment to his family and community noteworthy. 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. However, during deliberation, the Board determined the applicant had a prior period of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service by granting partial relief to correct the applicant's records.

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 a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD form 214 for the period ending 20 February 1975 by adding the following statement in item 18 (Remarks): CONTINUOUS HONORABLE ACTIVE SERVICE from 19720405 to 19721210."

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 upgrade of the applicant's characterization of service from under other than honorable conditions to honorable.

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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 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, provided guidance for the administrative separation of enlisted personnel:

a. Chapter 10 of this regulation provided a member who has committed an offense or offenses, the punishment for which, under the Uniform Code of Military Justice and the Manual for Courts-Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the Service. The discharge request may be submitted after court-martial charges are preferred against the member, or, until final action on the case by the court-martial convening authority. A member who is under a suspended sentence of a punitive discharge may also submit a request for discharge for the good of the Service. An under other than honorable conditions discharge certificate normally is appropriate for a member who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member 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//