

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 July 2024

DOCKET NUMBER: AR20230011560

APPLICANT REQUESTS: reconsideration of his previous requests for an upgrade of his discharge under other than honorable conditions (UOTHC).

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DA Form 20 (Enlisted Qualification Record)
- Two DD Forms 214 (Armed Forces of the United States Report of Transfer or Discharge) for the periods ending 5 July 1969 and 18 February 1972
- DD Form 4 (Enlistment Contract - Armed Forces of the United States)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case number AR1998012610 by the Army Board for Correction of Military Records (ABCMR) in Docket Number AC98-12464 on 14 January 1999.
2. The applicant states, in effect, his discharge should be upgraded because he was never afforded an opportunity to serve in the military occupational specialty (MOS) for which he reenlisted due to an error made by his recruiter. He reenlisted for Marine Maintenance, but his recruiter failed to submit the paperwork to schedule him for training. So, when he left Vietnam, he was reassigned to Fort Hood, TX.
3. The applicant's record is not readily available. Therefore, this case is being considered based upon the documents cited in his previous Record of Proceedings the validity of which he is not disputing, and the documents provided by the applicant.
4. On 22 August 1968, the applicant enlisted in the Regular Army for a period of 2 years in the rank/pay grade of private (PV1)/E-1. Upon completion of initial entry training, he was awarded military occupational specialty 11B (Light Weapons Infantryman) and assigned to unit in Vietnam. He was advanced to the rank/pay grade of private first class (PFC)/E-3 on 26 January 1969 and that was the highest rank he held while serving. On 22 August 1968, he was honorably discharged for the purpose of

immediate reenlistment. He was credited with 10 months and 14 days of net service this period.

5. On 6 July 1969, while serving in Vietnam, the applicant reenlisted for a period of 3 years for Army Career Group 61 (Marine Operations). The applicant's DA Form 20 shows:

a. In Item 31 (Foreign Service) he served in the Vietnam from 19 January 1969 to 18 January 1970 and his conduct and efficiency ratings for this period were "Excellent."

b. In Item 38 (Record of Assignments) he was assigned to a unit at Fort Hood, TX on 2 March 1970 in Duty MOS 11E (Armor Crewman) with principal duty as a Loader.

c. In Item 44 (Time Lost) his duty status was reported as Absent Without Leave (AWOL) on the following dates:

- 12 March to 24 April 1970
- 22 May to 1 June 1970
- 25 November 1970 to 2 March 1971
- 20 June 1971 to 5 January 1972
- 6 May 1970
- 30 June to 19 October 1970
- 14 April to 20 May 1971

6. The applicant's previous Record of Proceedings shows:

a. On 12 January 1972, court-martial charges were preferred against the applicant for seven specifications of being AWOL during the aforementioned periods.

b. On 1 February 1972, the applicant voluntarily submitted a request for administrative separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, for the good of the service in lieu of trial by court-martial. He submitted a statement in his own behalf wherein he cited the following factors contributed to his misconduct: his assignments from his prior service, trouble with reenlistment and promotions, his wife having a child that was not his, and his assignment to Fort Hood, TX, where he was informed that nothing could be done about his reenlistment.

c. On 9 February 1972, the appropriate authority approved his request for discharge and directed he be issued an Undesirable Discharge Certificate.

7. The applicant's DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200 for the good of the service on 18 February 1972 in the rank/pay grade of PV1/E-1. His service was characterized as UOTHC, his separation program number was "246", and his reentry eligibility code was "3B." He was credited with completion of 1 year, 2 months, and 29 days of net active service. He was credited

with time lost due to AWOL from 12 March to 24 April 1970, 6 May 1970, from 22 May to 1 June 1970, from 30 June to 19 October 1970, from 25 November 1970 to 2 March 1971, from 14 April to 20 May 1971, and from 20 June 1971 to 5 January 1972.

89. The applicant petitioned the Army Discharge Review Board for relief. The ADRB denied his appeal on 5 February 1982.

9. The applicant petitioned the ABCMR for relief on 15 January 1998. On 17 February 1999, the applicant was informed the Board had considered his application under procedures established by the Secretary of the Army and denied his application. The Board stated, considering all the evidence, allegations, and information presented by the applicant, and evidence of record, applicable law and regulations, it is concluded:

a. The applicant's voluntary request for separation under the provisions of Army Regulation 635-200, chapter 10, for the good of the service, to avoid trial by court-martial, was administratively correct and in conformance with applicable regulations. The type of discharge directed and the reasons therefore were appropriate considering all the facts of the case.

b. Careful consideration has been given to the applicant's contentions. However, his multiple and extensive absences for which court-martial charges had been preferred against him is too serious, and his service during his last enlistment was too undistinguished, to warrant relief. In view of the foregoing, there is no basis for granting the applicant's request.

11. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in lieu of trial by court martial. In doing so, he would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

12. The absence of the applicant's separation packet is duly noted. However, because the Board has the previous ROP and the applicant's DA Form 20 and DD Form 214, it must presume administrative regularity, meaning, unless there is proof to the contrary, the Board assumes the Army's actions were administratively correct.

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:

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 request, supporting documents, evidence in the records, and

published DoD guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant was charged with commission of offenses punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service and reason for separation the applicant received upon separation were 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 the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AC98-12464 on 14 January 1999.

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[Redacted]

[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. Title 10, U.S. Code, Section 1552(b), provides that applications for correction of military records must be filed within three years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. 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. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

4. 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/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.

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//