

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 July 2024

DOCKET NUMBER: AR20230012371

APPLICANT REQUESTS: reconsideration of his prior request for correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show:

- an upgrade of his discharge from under other than honorable conditions
- addition of awards and decorations

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's cases by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20080013956 on 17 March 2009 and Docket Number AR20170017537 on 21 August 2020.
2. The applicant states his military medals are not shown on his DD Form 214. Additionally, he is requesting an upgrade of his discharge to obtain a Veterans driver's license.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 26 March 1969.
 - b. On 28 August 1969, he was convicted by a special court-martial of one specification of being absent without leave (AWOL) from on or about 7 July 1969 to on or about 19 August 1969. His sentence included confinement for three months and forfeiture of \$50.00 pay per month for three months.
 - c. Special Court-Martial Order Number 1263 dated 28 August 1969, the convening authority approved the sentence and ordered it executed, but the execution of the

portion thereof adjudging confinement for three months was suspended for three months.

d. On 21 April 1970, he was convicted by a special court-martial of one specification of AWOL from on or about 15 December 1969 to on or about 13 April 1970. His sentence included confinement for four months.

e. Special Court-Martial Order Number 494 dated 7 May 1970, the convening authority approved the sentence and ordered it executed.

f. The service record is void of the separation proceedings; however, additional AWOL dates are noted in the applicant's DA Form 20 and DD Form 214.

g. On 19 May 1971, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 1 years, 2 months, and 29 days of active service with the below listed periods of time lost. He was assigned separation program number 28B and with reenlistment code RE-3 & 3B. He was awarded or authorized the Marksman Marksmanship Qualification Badge with Rifle Bar.

- 7 July 1969 to 18 August 1969 (43 days)
- 21 August 1969 to 27 August 1969 (7 days)
- 15 December 1969 to 14 July 1970 (212 days)
- 25 January 1971 to 1 April 1971 (67 days)

h. A DD Form 215 (Correction to DD Form 214) was issued on 21 August 2009. The above referenced DD Form 214 was corrected as follows:

- Delete: Markman Marksmanship Qualification Badge with Rifle Bar
- Add:
 - National Defense Service Medal
 - Sharpshooter Marksmanship Qualification Badge with Rifle Bar
 - Markman Marksmanship Qualification Badge with Machine Gun Bar

4. On 17 March 2009, the ABCMR rendered a decision in Docket Number AR20080013956. The Board determined that the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommended the service record of the individual concerned be corrected by adding the National Defense Service Medal, the Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16), and the Marksman Marksmanship Qualification Badge with Machinegun Bar (M-60) to the applicant's DD Form 214. The applicant was issued a DD Form 215.

5. On 21 August 2020, the ABCMR rendered a decision in Docket Number AR20170017537. Based upon the short term of honorable service completed prior to

multiple lengthy AWOL offenses, the Board concluded there was insufficient evidence of an error or injustice which would warrant a change to the applicant's characterization of service.

6. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

7. By regulation, action will be taken to separate an individual for unfitness or unsuitability when it is clearly established that despite attempts to rehabilitate or develop him as a satisfactory Soldier, further effort is unlikely to succeed. An individual separated by reason of unfitness will be furnished an Undesirable Discharge Certificate, as warranted by his military record.

8. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination 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 numerous periods of AWOL.

2. The Board determined the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. 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. During deliberation, the Board found the applicant was issued a DD Form 215, dated 21 August 2009 that captured the applicant's awards that were omitted from his DD form 214. Therefore, the Board agreed reversal of the previous Board determination of a discharge upgrade is without merit and denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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 AR20080013956 on 17 March 2009 and Docket Number AR20170017537 on 21 August 2020.

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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 635-212 (Unfitness and Unsuitability), in effect at the time, establishes policy and provides procedures and guidance for eliminating personnel who are found unfit or unsuitable for further military service.

a. It provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay just debts.

b. An individual separated by reason of unfitness will be furnished an undesirable discharge certificate except that an honorable or general discharge certificate may be awarded if the individual being discharged has been awarded a personal decoration or if warranted by the particular circumstances in a given case.

2. Army Regulation 635-200 (Active Duty Enlisted Separations), currently in effect, sets forth the basic policy for separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Paragraph 3-7b (General Discharge) states 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//