

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 June 2024

DOCKET NUMBER: AR20230012566

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) character of service to honorable.

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 consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AC86-06781 on 2 March 1988.
2. As a new argument, the applicant states he was discriminated against and received unfair treatment, based upon his race, while stationed at Fort Hood, TX. As an aging Vietnam Veteran with health issues, he is badly in need of benefits at this time.
3. The applicant enlisted in the Regular Army on 27 July 1967 for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 11B (Light Weapons Infantryman). The highest rank he attained was private first class/E-3.
4. Before a special court-martial at Fort Leonard Wood, MO on 18 March 1968, the applicant pled guilty to and was found guilty of two specifications of absenting himself from his unit without authority (AWOL) on or about 30 December 1967 until on or about 26 April 1967, and on or about 10 February 1968 until on or about 17 February 1968. His sentence consisted of confinement at hard labor for five months. The sentence was approved and ordered duly executed on 20 March 1968.
5. The applicant served in the Republic of Vietnam from 18 April 1968 to 17 April 1969.
6. Before a special court-martial at Fort Leonard Wood, MO on 20 November 1969, the applicant was found guilty of two specifications of being AWOL on or about 21 August 1969 until on or about 3 September 1969, and on or about 5 September 1969 until on or

about 19 October 1969. His sentence consisted of reduction to private/E-1. The sentence was approved and ordered duly executed on 1 December 1969.

7. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 18 February 1970, for being AWOL, on or about 19 January 1970 until on or about 17 February 1970. His punishment consisted of forfeiture of \$30.00 pay, reduction to private/E-2, 14 days of extra duty, and 14 days of restriction.

8. Before a special court-martial at Fort Leonard Wood, MO on 3 June 1970, contrary to his plea of not guilty, the applicant was found guilty of two specifications of being AWOL, on or about 10 March 1970 until on or about 5 April 1970, and on or about 12 April 1970 until on or about 20 May 1970. His sentence consisted of forfeiture of \$60.00 pay per month for three months and confinement at hard labor for three months. The sentence was approved and ordered duly executed on 9 June 1970.

9. The applicant underwent a psychiatric evaluation on 9 March 1971. The evaluating provider determined the applicant was mentally responsible and able to determine right from wrong. He had the mental capacity to participate in board proceedings.

10. Before a special court-martial, at Fort Hood, TX, on 11 February 1971, contrary to his plea of not guilty, the applicant was found guilty of wrongfully communicating a threat to Staff Sergeant [REDACTED] on or about 15 November 1970. His sentence consisted of reduction to private/E-1, forfeiture of \$82.00 pay per month for three months and confinement at hard labor for 20 days. The sentence was approved and ordered duly executed on 16 March 1971.

11. The applicant was notified of his commander's intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability) by reason of unfitness.

12. The applicant acknowledged receipt of the notification and was counseled on the basis for the contemplated separation action, its effects, and the rights available to him. He requested consideration of his case and an appearance before a board of officers, with representation by appointed counsel. He acknowledged understanding he may expect to encounter substantial prejudice in civilian life in the event of a general discharge, and he may be ineligible for many or all benefits as a Veteran under both Federal and State laws as a result of a UOTHC discharge. He elected not to submit statements in his own behalf.

13. On 31 March 1971, the applicant's commander recommended the applicant be required to appear before a board of officers for the purpose of determining whether he should be discharged prior to the expiration of his term of service under the provisions

of AR 635-212. The commander further stated the applicant's performance was characterized by intentional shirking and behavior rendering him repeatedly subject to punitive action.

14. The applicant underwent a medical examination on 6 April 1971. The relevant Standard Form (SF) 93 (Report of Medical History) and corresponding SF 88 (Report of Medical Examination) show the applicant reported being in good health, and he was deemed medically qualified for separation.

15. The applicant's intermediate chain of command reviewed and concurred with the recommended separation action, further recommending the issuance of an undesirable discharge.

16. The applicant was directed to appear before a board of officers, which convened on 2 June 1971. After careful consideration, the board found the applicant undesirable for further retention in the military due to habits and traits of character manifested by the repeated commission of petty offenses and habitual shirking. The board recommended the applicant be discharged from the service, by reason of unfitness, with the issuance of a DD Form 258A (Undesirable Discharge Certificate).

17. Before a summary court-martial, at Fort Hood, TX on 14 June 1971, the applicant was found guilty of two specifications of being AWOL, on or about 11 May 1971 until on or about 12 May 1971, and on or about 24 May 1971 until on or about 26 May 1971, and two specifications of absenting himself from his place of duty, on or about 12 May 1971. He was sentenced to confinement at hard labor for 30 days and forfeiture of \$125.00 pay. The sentence was approved and ordered duly executed on 14 June 1971.

18. The applicant was discharged on 12 July 1971, under the provisions of AR 635-212. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) confirms his service was characterized as UOTHC. He was credited with 2 years, 10 months, and 16 days of net active service this period with 58 days of lost time. He was awarded or authorized the following:

- Vietnam Service Medal with four bronze service stars
- Republic of Vietnam Campaign Medal
- Republic of Vietnam Gallantry Cross with palm device
- Combat Infantryman Badge
- Expert Marksmanship Qualification Badge (Machine Gun M-60)
- Sharpshooter Marksmanship Qualification Badge (Rifle M-16)
- Marksman Marksmanship Qualification Badge (Rifle M-14)

19. The ABCMR reviewed the applicant's request for an upgrade of his UOTHC discharge on 2 March 1988. After careful consideration, the Board determined there

was not sufficient justification to establish that it would be in the best interest of justice to excuse the applicant's failure to file within the time prescribed by law. The applicant subsequently appealed on four additional occasions. In each case, the applicant's request for reconsideration was returned without action by the Board.

20. AR 635-212, in effect at the time, stated that an individual was subject to separation when it was clearly established that despite attempts to rehabilitate or develop him as a satisfactory Soldier, further effort was unlikely to succeed.

21. The Board should consider the applicant's statement in accordance with the published equity, injustice, or clemency determination guidance.

#### BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, 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 separation was not in error or unjust.

3. The member in the minority found the applicant's service in Vietnam to be a basis for clemency. The member in the minority determined the applicant's character of service should be changed to under honorable conditions (general).

#### 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 AC86-06781 on 2 March 1988.

12/19/2024

X

CHAIRPERSON

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. AR 635-200 (Personnel Separations – Enlisted Personnel), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. An honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

2. AR 635-212, then in effect, provided the policy and procedures for administrative separation of enlisted personnel for unfitness and unsuitability. 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. This regulation also prescribed that an undesirable discharge was normally issued.

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//