

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 July 2024

DOCKET NUMBER: AR20230013731

APPLICANT REQUESTS:

- reconsideration of his previous request for upgrade of his under honorable conditions (general) discharge
- award of the Meritorious Unit Commendation (MUC).

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

- Self-Authored Letter in lieu of DD Form 149 (Application for Correction of Military Record)
- MUC Information
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- Attorney Letter
- Department of Veterans Affairs (DVA) Letter (two)
- Army Board for Correction of Military Records (ABCMR) Letter

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20180011224 on 1 October 2020.

2. The applicant states he was granted an honorable discharge through his previous request and does not understand why it was changed. He was given no reason why the approval by the Board was overridden. The applicant recounts what happened in each instance to the best of his knowledge. He was pulled by his collar to go to another area, and he used his hand to push the person away. He missed bed check when he was in the next hooch hanging out with his friends and he was told on two occasions by Lieutenant KD\_\_ he did not have to go to the motor pool. He also states he would have never signed the paperwork if he was told the reason was unfitness and unsuitability, he reiterates that he would have never signed the paperwork. He never refused a direct order. (full statement available for review)

3. The applicant's attorney states he requested that the applicant submit this appeal in response to the action taken by the Deputy Assistant Secretary of the Army, wherein a favorable decision on an upgrade was reversed. Additionally, the applicant will present himself for questioning if required. The applicant served his country honorably as a combat Soldier while the benefits are important it is his legacy to his children and grandchildren that compels him to obtain an upgrade of his discharge.

4. The applicant enlisted in the Regular Army on 14 August 1969 for 2 years. His military occupational specialty was 11B (Infantryman).

5. He served in Vietnam from 19 January 1970 to on or about 21 October 1970. He served with the 47th Transportation Company, effective 1 September 1970.

6. Department of the Army Pamphlet 672-3 (Unit Citation and Campaign Participation Credit Register) lists the unit awards received by units serving in Vietnam. This document shows that the 47th Transportation Company was cited for award of the MUC by Department of the Army General Orders Number 24, dated 1972, for the period of 1 September 1968 to 28 February 1970 (before the applicant's effective date of service).

7. The applicant received non-judicial punishment under Article 15 of the Uniform Code of military Justice (UCMJ) on:

- 6 October 1969 for unlawfully striking Private CPH\_\_ on the face with his fist on or about 3 October 1969; his punishment consisted of forfeiture of \$26.00 for one month, restriction and extra duty
- 28 May 1970 for violating a standing written order by missing bed check on or about 25 May 1970; his punishment consisted of restriction and extra duty
- 3 July 1970 for two instances of without authority failure to go to his appointed place of duty on or about 28 June 1970 and on or about 29 June 1970 and for violating a lawful directive by being in an off-limits area; his punishment was reduction to private 2/(E-2), forfeiture of \$38.00 for one month, restriction, and extra duty

8. On 9 August 1970 a bar to reenlistment was requested by the applicant's commander. The applicant elected not to make a statement. The commander's letter shows the applicant demonstrated he was unfit for further military service. He was a constant disciplinary problem that required frequent counseling and close supervision, even in the simplest assignments. His military appearance, sanitary habits, maintenance of clothing and equipment, and his military bearing have been far below the expected standards. The chain of command recommended approval. The bar to reenlistment was approved on 24 August 1970.

9. The applicant's commander requested a psychiatric evaluation on 4 August 1970. The evaluation would be given to the applicant for the purpose of elimination from the service under the provisions of Army Regulation (AR) 635-212 (Personnel Separations-Discharge-Unfitness and Unsuitability). The Applicant had been transferred to the unit in January 1970. In the 6 months he had been assigned he was involved in repeated disciplinary problems, to include failing to be at the appointed place of duty and being in off limits areas. He had continued to be unsatisfactory and his response to punishment had been very poor. He had been counseled with poor results.

10. The applicant underwent a psychiatric evaluation on 7 August 1970 that shows he met retention standards, was mentally responsible, able to distinguish right from wrong and to adhere to the right and has the mental capacity to understand and participate in board proceedings. His diagnosis was immature personality, aggressiveness, chronic modern manifested by defiance of authority; minimal stress in combat zone' moderate predisposition: history of defiance of authority.

11. The applicant's immediate commander notified him on 18 September 1970 of his intent to initiate action to discharge him from the U.S. Army under the provisions of AR 635-212 by reason of unsuitability. The basis for his recommendation was his pattern of shirking, habitual failure to be at his appointed place of duty, constant misconduct and abuse of military authority, refusal to respond to counseling or attempt to improve himself and psychiatric recommendation. He advised the applicant of the rights available to him. He acknowledged receipt on 19 September 1970.

12. The applicant consulted with legal counsel on 18 September 1970 and was advised of the basis for the contemplated action to separate him for unsuitability under the provisions of AR 635-212 and the effect of action taken by him in waiving his rights. He waived consideration of his case by a board of officers and personal appearance before a board of officers. He waived representation by counsel and elected not to submit a statement in his own behalf. He understood that he may expect to encounter substantial prejudice in civilian life if an under honorable conditions, general discharge was issued to him.

13. The applicant's immediate commander recommended he be discharged from service under the provisions of AR 635-212 for unsuitability on 25 September 1970. He recommended the applicant be separated from service with a general discharge, prior to his expiration term of service.

14. The applicant's chain of command recommended approval on 8 October 1970, with a under honorable conditions (general) discharge.

15. The separation authority approved the discharge action under the provisions of AR 635-212 for unsuitability on 18 October 1970, with the issuance of a DD Form 257A (General Discharge Certificate).

16. The applicant was discharged accordingly on 21 October 1970. His DD Form 214 shows he was discharged under the provisions of AR 635-212 with Separation Program Number 46A by reason of unsuitability. His character of service was under honorable conditions (general). He completed 1 year, 2 months, and 8 days of net active service. He was awarded the National Defense Service Medal, Vietnam Service Medal (VSM), and the Vietnam Campaign Medal (VCM).

17. By regulation, individuals would be discharged by reason of unsuitability when their records were characterized by one or more of the following: inaptitude, character and behavior disorders, apathy, defective attitudes, and inability to expend effort constructively, alcoholism, enuresis, and homosexuality. This regulation also prescribed that an honorable or general discharge was issued as warranted by the military record.

18. In reference to awards, by regulation AR 600-8-22 (Military Awards), all personal decorations require a formal recommendation, approval through the chain of command, and announcement in orders.

19. The applicant provides:

a. A copy of his DD Form 214 as discussed above and a Form with the 62nd Transportation Unit listed.

b. A DVA Letter, dated 26 December 2013 shows the applicant had honorable service from 14 August 1969 to 21 October 1970 and had a service-connected disability with a combined evaluation of 80%.

c. A DVA letter, dated 28 July 2014 shows a service-connected disability with a 100% permanent and total evaluation, effective 31 March 2013. The records further indicate he served in the Army from 14 August 1969 to 21 October 1969 (lined through) 1970 written in and received an honorable discharge.

d. ABCMR letter, dated 16 June 2021, which shows the Secretary of the Army (Review Boards) determined that relief was not warranted in respect to the Board's decision to grant relief.

20. On 17 November 1975, 10 May 1978, and 29 October 1982, the Army Discharge Review Board determined, the applicant was properly discharged and denied his requests for a change in the type and nature of his discharge.

21. On 26 July 1983 and 17 June 1986, administrative corrections were made to the applicants DD Form 214, for the period ending 21 October 1970. A DD Form 215 (Correction to DD Form 214) was issued to add/delete the following:

- DELETE: Vietnam Service Medal and Vietnam Campaign Medal
- ADD: Vietnam Service Medal with three bronze service stars, Republic of Vietnam Campaign Ribbon with device 1960, Sharpshooter Badge with Automatic Rifle Bar, Republic of Vietnam Gallantry Cross with Palm Unit Citation

22. On 1 October 2020, in response to the applicant's request to have his discharge upgraded, after reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined partial relief was warranted. One potential outcome discussed was to deny all requested relief based upon the corrections already made on the applicant's DD Form 215 concerning awards, information found on the DD Form 20 concerning the applicant's rank at the time of separation, as well as the short term of honorable service completed prior to a pattern of misconduct, which included violent behavior towards others. However, after discussions, the Board decided to grant clemency by upgrading the applicant's characterization of service to Honorable based upon his Vietnam service and the guidance liberal consideration.

23. On 16 June 2021, the Deputy Assistant Secretary of the Army (Review Boards) (DASA (RB)) disapproved the Board's findings and determination. The DASA (RB) stated: "I have reviewed the application, the supporting documents and the findings and recommendations of the ABCMR Board. Based upon the pattern of misconduct leading to the applicant's separation, some of which included violent behavior towards others, I find relief is not warranted. I, therefore, deny the applicant's requested relief."

24. Also on 15 June 2021, the ABCMR Executive Office dispatched a letter to the applicant that states:

a. Enclosed is a copy of the Record of Proceedings of the Board for your information. However, after reviewing the findings, conclusions, and Board member recommendations, the Deputy Assistant Secretary of the Army (Review Boards) found that relief was not warranted. This decision in your case is final. You may request reconsideration of this decision letter to the above address only if you can present new evidence or argument that was not considered by the Board when it denied your original application.

b. Based upon the pattern of misconduct leading to the applicant's separation, some of which included violent behavior towards others, find relief is not warranted and denied the applicant's requested relief.

25. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination 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.

a. Discharge upgrade: Deny. The evidence shows the applicant exhibited a pattern of misconduct consisting of multiple NJPs for unlawfully striking another Soldier, missing bed check, failure to go to his appointed place of duty, and violating directive. He also had a bar to reenlistment and his commander stated that the applicant demonstrated he was unfit for further military service as he was a constant disciplinary problem, he exhibited a pattern of shirking, habitual failure to be at his appointed place of duty, constant misconduct and abuse of military authority, and refusal to respond to counseling or attempt to improve himself. As a result, his chain of command initiated separation action against him for unsuitability. He was separated with an under honorable conditions discharge.

(1) A majority of the Board found no error or injustice in his separation processing. Given his misconduct, a general discharge is appropriate in his case. 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 the applicant received upon separation was not in error or unjust.

(2) The member in the minority believed the applicant's misconduct is minor. The applicant had two periods of excellent service and he served in Vietnam. Although he received NJP for assault; the member in the minority believed this was more of a scuffle than assault, and he was already punished for it. The member in the minority determined an honorable characterization of service is appropriate.

b. Meritorious Unit Commendation: Deny. The applicant served in Vietnam from 19 January 1970 to on or about 21 October 1970. He served with the 47th Transportation Company, effective 1 September 1970. The 47th Transportation Company was cited for award of the Meritorious Unit Commendation for the period of 1 September 1968 to 28 February 1970; before the applicant's effective date of service. The applicant does not qualify for this award.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. Regarding the issue being reconsidered (discharge upgrade), 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 AR20180011224 on 1 October 2020.
2. Regarding the new issue (Meritorious Unit Commendation), 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 for correction of the records of the individual concerned.

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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. AR 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument

that was not considered at the time of the ABCMR's prior consideration. 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.

2. AR 635-212 (Personnel Separations-Discharge-Unfitness and Unsuitability), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Action would be taken to separate an individual for unsuitability when it was clearly established that it was unlikely that he would develop sufficiently to participate in further military training and/or become a satisfactory Soldier or the individual's psychiatric or physical condition was such as to not warrant discharge for disability and they met retention medical standards.

b. Paragraph 6b (2) then in effect, set forth the policy and procedures for administrative separation of enlisted personnel for unfitness and unsuitability. Paragraph 6b provided that an individual was subject to separation for unsuitability when one or more of the following conditions existed: (1) inaptitude; (2) character and behavior disorders; (3) apathy (lack of appropriate interest, defective attitudes, and inability to expend effort constructively); (4) alcoholism; (5) enuresis; and (6) homosexuality (Class III - evidenced homosexual tendencies, desires, or interest, but was without overt homosexual acts).

c. When separation for unsuitability was warranted, an honorable or general discharge was issued as determined by the separation authority based upon the individual's entire record.

3. AR 635-200 (Active Duty Enlisted Administrative Separations), currently in effect, sets forth the basic policy for separation of enlisted personnel. The regulation states an honorable discharge was a separation with honor. The honorable characterization was appropriate when the quality of the Soldier's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that and other characterization would be clearly inappropriate.

4. AR 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The information entered thereon reflects the conditions as they existed at the time of separation. It states for: Block 24 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) entries will be for all periods of service. Check soldiers' service records for validity of awards.



5. AR 600-8-22 (Military Awards) prescribes Department of the Army policy, criteria, and administrative instructions concerning individual and unit military awards. The MUC is awarded to units for exceptionally meritorious conduct in the performance of outstanding services for at least 6 continuous months during the period of military operations against an armed enemy occurring on or after 1 January 1944. Units based in the continental United States are excluded from this award, as are other units outside the area of operations.

6. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//