

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 April 2025

DOCKET NUMBER: AR20230014164

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under honorable conditions (general) discharge.

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

DD Form 149 (Application for Correction of Military Record), 20 November 2023

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 AR20200002554 on 30 September 2020.

2. The applicant states hashish was planted under the dust cover of his bed. The company commander and sergeants knew about it. The Judge Advocate General told him, in effect, if he signed his discharge papers, he wouldn't be found guilty in a court-martial. He would be sent to Fort Leavenworth otherwise.

3. A review of the applicant's service records show the following:

a. On 3 August 1971, he enlisted in the Regular Army for 3 years. He attained the rank of private first class (PFC).

b. Summary Court-Martial Order Number 12, dated 1 June 1972, reflects he plead guilty, and he was convicted of drinking on post while assigned as a guard at Grafenwohr, Germany. He was sentenced to forfeiture of \$150.00 for 1 month and restriction to barracks for 60 days.

c. He accepted nonjudicial punishment on:

(1) 20 February 1973, for absenting himself from his place of duty (AWOL), from 17 January to 30 January 1973; and failure to go to his appointed duty on 16 February

1973. He was reduced to private/E-1, forfeited \$100.00 for 1 month and given 14 days restriction and extra duty.

(2) 15 March 1973, for breaking restriction on 4 March 1973. He was given restriction for 7 days.

d. On 1 August 1974, court-martial charges were preferred against him. A DD Form 458 shows he was charged with AWOL from his place of duty at Fiori Kaserne Guard House, Germany from 2015 hours to 2250 hours, 19 July 1974; and possession of 59.53 grams, more or less of marijuana on 3 July 1974.

e. After consulting with legal counsel on 16 August 1974, he voluntarily requested discharge for the good of the service in lieu of trial by court-martial, under the provisions of chapter 10, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel). In doing so, he acknowledged that the charges preferred against him under the Uniform Code of Military Justice (UCMJ), authorized the imposition of a bad conduct discharge or dishonorable discharge. He further acknowledged:

- he had been advised of the implications that were attached to it
- by submitting the request, he was acknowledging he was guilty of the charge(s) against him or of (a) lesser included offense(s) therein contained which also authorized imposition of a bad conduct or dishonorable discharge
- he could be discharged under other than honorable conditions, furnished an undesirable certificate, and he could be ineligible for many, or all benefits administered by the Department of Veterans Affairs (VA)
- he could be deprived of many, or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he could expect to encounter substantial prejudice in civilian life by reason of an under other than honorable conditions discharge
- he was advised he could submit any statements he desired in his own behalf, and elected not to do so

f. On 20 August 1974, his company commander recommended approval of his request for discharge. On the same date, his intermediate commanders recommended approval of his request for discharge.

g. On 22 August 1974, the separation authority approved his discharge for the Good of the Service with issuance of an Undesirable Discharge Certificate.

h. On 30 August 1974, he was discharged. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200, chapter 10. He completed 3 years and 15 days of net active service this period with 13 days' time lost.

4. On 3 December 1979, the Army Discharge Review Board voted to grant him partial relief and upgraded his discharge to under honorable conditions (general), finding it was inequitable. He was reissued a DD Form 215 (Correction to DD Form 214) showing the upgraded discharge.
5. On 29 December 2020 and in Docket Number AR20200002554, the Board voted not to grant him additional relief, finding insufficient evidence of an error warranting a change to his characterization of service.
6. 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:

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 applicant's contentions, the military record, and regulatory guidance were carefully considered.
2. The applicant submitted a request for reconsideration of his previous case without providing new evidence or a new argument for the Board to consider. Army Regulation 15-185 (ABCMR), the regulation under which this Board operates provides, the Board will not consider overturning a previous consideration without a new argument or evidence.

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 the overall merits of this case are insufficient as a basis to amend decision of the ABCMR set forth in Docket Number AR20200002554 dated 30 September 2020.

5/6/2025

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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. 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.

b. 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.

c. Chapter 10 provided that a member who had committed an offense or offenses for which, under the UCMJ and the Manual for Court Martial, 1969 (Revised Edition), the authorized sentence included a punitive discharge, could submit a request for discharge for the good of the service for conduct triable by court-martial. The request could be submitted at any time after charges were preferred. Although an honorable or general discharge could be directed, an Undesirable Discharge Certificate would normally be furnished to an individual who was discharged for the good of the service.

2. 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.

3. Army Regulation 15-185 (ABCMR) currently in effect, provides the ABCMR begins its consideration of each case with the presumption of administrative regularity.

a. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. An applicant may request the reconsideration of an ABCMR decision under the following circumstances:

(1) If the ABCMR receives the request for reconsideration and if the ABCMR has not previously reconsidered the matter, the ABCMR staff will review the request to determine if it contains evidence (including, but not limited to, any facts or arguments as to why relief should be granted) that was not in the record at the time of the ABCMR's prior consideration. If new evidence has been submitted, the request will be submitted to the ABCMR for its determination of whether the new evidence is sufficient to demonstrate material error or injustice. If no new evidence is found, the ABCMR staff will return the application to the applicant without action.

(2) If the ABCMR receives a request for reconsideration after the ABCMR has already considered one request for reconsideration, then the case will be returned without action and the applicant will be advised the next remedy is appeal to a court of appropriate jurisdiction

//NOTHING FOLLOWS//