

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 September 2024

DOCKET NUMBER: AR20230014945

APPLICANT REQUESTS: reconsideration of his prior request for affirmation of the under honorable conditions (General) discharge he received from the Army Discharge Review Board (ADRB) under the Department of Defense (DoD) Special Discharge Review Program (SDRP).

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Two DD Forms 214 (Report of Separation from Active Duty) for the period ending 29 September 1971

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 AR1999022725 on 24 June 1999.
2. The applicant states the Department of Veteran Affairs (VA) has stopped his pension payments stating the Board has rescinded his discharge upgrade. The VA also stated he had a DD Form 214 for 1973 that shows he was issued a dishonorable discharge; he proclaims he did not serve in 1973. During his 1971 service, he experienced significant trauma, as he watched a fellow Soldier shoot the drill sergeant in the head as they used live ammunition at the firing range. The incident has had a profound affect on him mentally and he had been trying to cope with no help. He did not know his upgrade was rescinded until the VA informed him and asks to have a new DD Form 214 with an under honorable conditions (General) discharge so he can use it and the letters included as new and relevant evidence to re-open his pension claim. The applicant annotates post-traumatic stress disorder as an issue/condition related to his request.
3. The applicant provides two DD Forms 214 for the period ending 29 September 1971 that will be referenced in the service record.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 23 February 1971.

b. His DA Form 20 (Enlisted Qualification Record) shows he served at Fort Polk, Louisiana and in item 44 (Time Lost Under Section 972, Title 10, United States Code and Subsequent to Normal Date ETS) the following:

- 9 July 71 to 13 July 1971, 5 days, absent without leave (AWOL)
- 25 July 1971 to 27 July 1971, 3 days, AWOL
- 8 September 1971 to 28 September 1971, 21 days, Confinement

c. On 17 July 1971, he accepted nonjudicial punishment for absenting himself from his unit from on or about 9 July 1971 until 14 July 1971.

d. DA Form 20B (Insert Sheet to DA Form 20 – Record of Court-Martial Conviction), shows two summary courts-martial convictions during the service period:

- Summary Court-Martial Order (SCMO) Number 42 – one specification for failing to report and one specification of AWOL (25 July 1971 until 28 July 1971); sentenced to 30 days of restriction, 20 days of hard labor, reduction to private/E-1 and forfeiture of \$65.00; adjudged on 16 August 1971
- SCMO Number 49 - two specifications of breaking restriction; sentenced to 30 days of hard labor with confinement and forfeiture of \$80.00; adjudged on 8 September 1971

e. On 17 August 1971, SCMO Number 42, shows the convening authority approved and ordered execution of the court-martial conviction sentence of forfeiture of \$65.00, hard labor without confinement twenty for 20 days and restriction to the limits of the company area for 30 days for two specifications of AWOL.

f. On 9 September 1971, SCMO Number 49, shows the convening authority approved and ordered execution of the court-martial conviction sentence of forfeiture of \$80.00, hard labor with confinement for 30 days.

g. On 9 September 1971, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-212 (Discharge Unfitness and Unsuitability), paragraph 6a for Unfitness. The specific reasons for his proposed recommendation were the applicant's performance; while assigned to two different units and command teams for Advanced Individual Training (AIT) from 7 May 1971 to 9 September 1971; was unsatisfactory and considered rehabilitation efforts would be useless. The applicant acknowledged receipt of the notification of separation action on the same date.

h. After consulting with legal counsel, he acknowledged the rights available to him and the effect of waiving his rights. The immediate commander initiated separation action against the applicant for unfitness and the chain of command recommended that he be issued an Undesirable Discharge Certificate.

i. On 23 September 1971, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-212, paragraph 6a for unfitness and issued an Undesirable Discharge Certificate.

j. On 29 September 1971, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 6 months and 9 days of active service with approximately 29 days of lost time. He was assigned separation code SPN 28B. It also shows he was awarded or authorized:

- National Defense Service Medal
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)

k. He enlisted in the Regular Army on 17 August 1973.

l. His DA Form 20 (Enlisted Qualification Record), dated 19 September 1973, shows he served at Fort Polk, Louisiana for basic combat training and in item 16 (Service Dates) his Basic Active Service Date (BASD) as 17 August 1973.

m. On 9 October 1973, court-martial charges were preferred on the applicant for:

- Charge I – on or about 25 September 1973, attempt to defraud the U.S. government of funds of value of \$300.00 (Article 80)
- Charge II – on or about 25 September 1973 until 27 September 1973, absent himself from his unit (Article 86)
- Charge III – on or about 25 September 1973, falsely make the signature of R.T.S. requesting pay for action at the Finance and Accounting Office with intent to defraud and on or about 27 September 1973 at or near the Fort Polk Branch of Barksdale Credit Union with intent to defraud make e the signature of R.T.S. as an endorsement on a loan application (Article 123 (2))
- Charge IV – on or about 25 September 1973 and 27 September 1973, wrongfully and unlawfully impersonate a noncommissioned officer (NCO) by publicly wearing the uniform and insignia of rank of sergeant with intent to defraud the U.S. Government at the Finance and Accounting Office and the Fort Polk Branch of Barksdale Credit Union

n. On 2 October 1973, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life

o. He submitted a statement to the separation authority on his own behalf which stated he enlisted in the Army for 3 years and he cannot adjust to the Army and a discharge would be for the good of the Army and himself.

p. On 26 October 1973, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge for the good of the service. He would be issued an Undesirable Discharge Certificate (DD Form 258a) and reduced to the lowest enlisted pay grade.

q. On 30 October 1973, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 2 months and 14 days of active service with 32 days of lost time. He was assigned separation code SPD 246 and the narrative reason for separation listed as "For the Good of the Service," with reentry code 3B/4. It also shows he was awarded or authorized the National Defense Service Medal.

r. On 27 May 1977, the applicant applied to the Army Discharge Review Board (ADRB) for an upgrade of his discharge under the DoD SDRP. On 22 July 1977, after reviewing the findings and conclusion of the ADRB, the Secretary of the Army directed that he be informed his discharge had been upgraded to under honorable conditions (General) from under other than honorable conditions.

5. On 30 January 1978, the applicant was notified by the Chief of Special Discharge Review Activity, that the previous upgrade of his discharge had been reviewed as required by Public Law 95-126, and as a result of the review, the board determined his discharge did not qualify for upgrading under the new uniform standards for discharge review. He was further informed the upgraded discharge under the DoD SDRP was not

affirmed and will be voided. As a result of the new law, he would not be able to use the discharge to qualify for VA benefits.

6. On 24 June 1999, the ABCMR rendered a decision in Docket Number AR1999022725. The Board noted the alleged error or injustice was, or with reasonable diligence should have been discovered on 30 October 1973, the date he was last released from active military service. The time for the applicant to file a request for correction of any error or injustice expired on 30 October 1976. The application is dated 13 July 1998 and the applicant has not explained or otherwise satisfactorily demonstrated by competent evidence that it would be in the interest of justice to excuse the failure to apply within the time allotted. For that reason, the Board determined the applicant's application was not submitted within the time required. The applicant has not presented, and the records do not contain sufficient justification to conclude that it would be in the interest of justice to grant the relief requested or to excuse the failure to file within the time prescribed by law.

7. By regulation (AR 635-212), Paragraph 6a of the regulation provided that an individual was subject to separation for unfitness when one or more of the following conditions existed: (1) because of frequent incidents of a discreditable nature with civil or military authorities; (2) sexual perversion including but not limited to lewd and lascivious acts, indecent exposure, indecent acts with or assault on a child; (3) drug addiction or the unauthorized use or possession of habit-forming drugs or marijuana; (4) an established pattern of shirking; (5) an established pattern of dishonorable failure to pay just debts; and (6) an established pattern showing dishonorable failure to contribute adequate support to dependents (including failure to comply with orders, decrees or judgments). When separation for unfitness was warranted, an undesirable discharge was normally considered appropriate.

8. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

9. 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.

10. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his prior request for affirmation of the under honorable conditions (General) he received from the Army Discharge Review Board (ADRB) under the Department of Defense (DoD) Special

Discharge Review Program (SDRP). He selected PTSD on his application as related to his request. This opine will narrowly focus on the issue of mitigation based on the applicant's contention of PTSD.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- Applicant enlisted in the Regular Army on 23 February 1971.
- DA Form 20B (Insert Sheet to DA Form 20 – Record of Court-Martial Conviction), shows two summary courts-martial convictions during the service period:
- Summary Court-Martial Order (SCMO) Number 49 - two specifications of breaking restriction; sentenced to 30 days of hard labor with confinement and forfeiture of \$80.00; adjudged on 8 September 1971
- SCMO Number 42 – one specification for failing to report and one specification of AWOL (25 July 1971 until 28 July 1971); sentenced to 30 days of restriction, 20 days of hard labor, reduction to private/E-1 and forfeiture of \$65.00; adjudged on 16 August 1971
- On 9 September 1971, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-212 (Discharge Unfitness and Unsuitability), paragraph 6a for Unfitness. The specific reasons for his proposed recommendation were the applicant's performance; while assigned to two different units and command teams for Advanced Individual Training (AIT) from 7 May 1971 to 9 September 1971; was unsatisfactory and considered rehabilitation efforts would be useless. The applicant acknowledged receipt of the notification of separation action on the same date.
- On 23 September 1971, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-212, paragraph 6a for unfitness and issued an Undesirable Discharge Certificate.
- On 29 September 1971, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 6 months and 9 days of active service with approximately 29 days of lost time. He was assigned separation code SPN 28B.
- Applicant once again enlisted in the Regular Army on 17 August 1973.
- On 9 October 1973, court-martial charges were preferred on the applicant for:
- Charge I – on or about 25 September 1973, attempt to defraud the U.S. government of funds of value of \$300.00 (Article 80)
- Charge II – on or about 25 September 1973 until 27 September 1973, absent himself from his unit (Article 86)

- Charge III – on or about 25 September 1973, falsely make the signature of R.T.S. requesting pay for action at the Finance and Accounting Office with intent to defraud and on or about 27 September 1973 at or near the Fort Polk Branch of Barksdale Credit Union with intent to defraud make the signature of R.T.S. as an endorsement on a loan application (Article 123 (2))
- Charge IV – on or about 25 September 1973 and 27 September 1973, wrongfully and unlawfully impersonate a noncommissioned officer (NCO) by publicly wearing the uniform and insignia of rank of sergeant with intent to defraud the U.S. Government at the Finance and Accounting Office and the Fort Polk Branch of Barksdale Credit Union
- On 2 October 1973, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10.
- On 30 October 1973, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 2 months and 14 days of active service with 32 days of lost time. He was assigned separation code SPD 246 and the narrative reason for separation listed as “For the Good of the Service,” with reentry code 3B/4.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant’s file. The applicant states, the Department of Veteran Affairs (VA) has stopped his pension payments stating the Board has rescinded his discharge upgrade. The VA also stated he had a DD Form 214 for 1973 that shows he was issued a dishonorable discharge; he proclaims he did not serve in 1973. During his 1971 service, he experienced significant trauma, as he watched a fellow Soldier shoot the drill sergeant in the head as they used live ammunition at the firing range. The incident has had a profound affect on him mentally and he had been trying to cope with no help. He did not know his upgrade was rescinded until the VA informed him and asks to have a new DD Form 214 with an under honorable conditions (General) discharge so he can use it and the letters included as new and relevant evidence to re-open his pension claim. The applicant annotates post-traumatic stress disorder as an issue/condition related to his request.

d. Due to the period of service no active-duty electronic medical records were available for review. Hardcopy documentation shows the applicant underwent a mental status evaluation. The evaluation indicates the applicant had no significant mental illness or diagnosis, he was mentally responsible, able to distinguish right from wrong, able to adhere to the right, and had the mental capacity to understand and participate in board proceedings.

e. The VA’s Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. The applicant sought services via humanitarian assistance with the VA. An intake appointment dated 18 May 2000, indicates he self-referred “for

assistance with problems with alcohol abuse, cocaine abuse, and housing” since he was experiencing homelessness. He reported using alcohol for over 30 years and cocaine for around 27 years. The applicant was described as a “poor historian”. He self-reported a history of PTSD and schizophrenia but provided no medical documentation and stated that he “did not want treatment for these difficulties since his primary concern was substance abuse and homelessness”. Contrary to his service record, the applicant reported PTSD related to “unspecified combat trauma”. The applicant was provided with substance abuse treatment, admission to a halfway house, material support, and case management. He was inconsistent in his participation in treatment and was suspected of continued substance abuse. The applicant discontinued services in June 2000. A note dated 23 June 2000, indicates he was not participating in treatment and became belligerent with his case manager who had not submitted an application for him to participate in Compensated Work Therapy (CWT). The applicant once again sought assistance from the VA in 2009, a discharge summary dated 27 February 2009, indicates he was hospitalized on 23 February 2009 since he had been homeless for two months and reported suicidal ideation. The applicant’s psychiatric symptoms appeared related to alcohol and substance use and upon discharge he was diagnosed with Alcohol Abuse; Substance Induced Mood Disorder; and Psychosis, NOS. Upon admission the record notes Substance-Induced Mood Disorder and Substance-Induced Psychosis.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD on his application.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnosis and the VA has not service-connected the applicant for any BH condition. The available VA electronic medical record indicates the applicant has engage in two brief episodes of care related to his extensive history of both alcohol and substance abuse along with issues of homelessness. The applicant was diagnosed with Alcohol Abuse, Substance Induced Mood Disorder, and Substance-Induced Psychosis. His symptoms likely resulted from his extensive history of polysubstance abuse since it is a risk factor for mental health symptoms. The applicant was discharged from military

service due to attempting to defraud the U.S. government of funds by impersonating a noncommissioned officer and falsely making the signature of the officer on a loan application. The applicant's medical record appears to indicate issues related to longstanding substance abuse. However, regardless of BH condition, the applicant's assertion of PTSD would not mitigate attempted theft/larceny, forgery, and impersonating an officer with intent to defraud. None of these acts are part of the history or natural sequelae of the applicant's asserted BH conditions. In addition, the forethought required to impersonate another person and apply for a loan indicates this was not a spur of the moment or impulsive decision. The applicant engaged in purposeful, conscious decision-making. Even if PTSD symptoms were present at the time of his misconduct, they do not affect the ability to distinguish right from wrong and act in accordance with the right.

h. Per Liberal Consideration, the applicant's selection of PTSD on his application is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with attempting to defraud the Government of funds, absenting himself from his unit on 27 September 1973, making a false signature, and two specifications of impersonating a commissioned officer, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned by his commander during separation. The applicant was discharged with an under other than honorable conditions characterization of service. On 22 July 1977, a new DD Form 214 was issued to the applicant under the Department of Defense Special Discharge Review Program and his discharge was upgraded to under honorable conditions (General). However, on 30 January 1978, the applicant received a letter notifying him that after re-review his upgraded discharge was nullified. The Board concluded the applicant's discharge should be upgraded to under honorable conditions (General) and granted 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 determined the evidence presented is sufficient to warrant amendment of the ABCMR's decision in Docket Number AR1999022725 on 24 June 1999. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 30 October 1973 to show an under honorable conditions (General) characterization of service.

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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. Public Law 95-126 enacted on 8 October 1977, provided generally, that no VA benefits could be granted based on any discharge upgraded under the DoD SDRP. It required the establishment of uniform published standards which did not provide for automatically granting or denying a discharge upgrade for any case or class of cases. The services were required to individually compare each discharge previously upgraded under one of the SDRPs to the uniform standards and to affirm only those cases which met those standards.

2. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences. The guidance further describes evidence sources and criteria and requires boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

5. 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 based on 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.

6. The Department of the Army Special Discharge Review Program (SDRP) was based on a memorandum from Secretary of Defense Brown and is often referred to as the "Carter Program." It mandated the upgrade of individual cases in which the applicant met one of several specified criteria and when the separation was not based on a specified compelling reason to the contrary. The ADRB had no discretion in such cases other than to decide whether recharacterization to fully honorable as opposed to a general discharge was warranted in a particular case. An individual who had received a punitive discharge was not eligible for consideration under the SDRP. Absentees who returned to military control under the program were eligible for consideration after they were processed for separation. Individuals could have their discharges upgraded if they met any one of the following criteria: wounded in action; received a military decoration other than a service medal; successfully completed an assignment in Southeast Asia; completed alternate service; received an honorable discharge from a previous tour of military service; or completed alternate service or excused from completing alternate service in accordance with PP 4313 of 16 September 1974. Compelling reasons to the contrary to deny discharge upgrade were desertion/AWOL in or from the combat area; discharge based on a violent act of misconduct; discharge based on cowardice or misbehavior before the enemy; or discharge based on an act or misconduct that would be subject to criminal prosecution under civil law.

7. Army Regulation 635-5 (Separation Processing and Documents, the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

8. Army Regulation 635-212 (Discharge Unfitness and Unsuitability), in effect at the time, set forth the basic authority for the elimination of enlisted personnel for unfitness and unsuitability. Paragraph 6a of the regulation provided that an individual was subject to separation for unfitness when one or more of the following conditions existed: (1) because of frequent incidents of a discreditable nature with civil or military authorities; (2) sexual perversion including but not limited to lewd and lascivious acts, indecent exposure, indecent acts with or assault on a child; (3) drug addiction or the unauthorized use or possession of habit-forming drugs or marijuana; (4) an established pattern of shirking; (5) an established pattern of dishonorable failure to pay just debts; and (6) an established pattern showing dishonorable failure to contribute adequate support to dependents (including failure to comply with orders, decrees or judgments). When separation for unfitness was warranted, an undesirable discharge was normally considered appropriate.

9. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. An under other than honorable conditions discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial in the following circumstances:

- when the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of Soldiers of the Army

- when the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army

d. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

//NOTHING FOLLOWS//