

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 September 2024

DOCKET NUMBER: AR20240001045

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

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim) (partially legible)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period 19 June 1975 to 23 May 1983
- third-party statement
- VA Administrative Decision, Issue: Character of Discharge Determination

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 AR20190009758 on 16 September 2019.

2. The applicant states he lost his orders to report while he was in transition to go to Germany. At the [REDACTED] airport, he lost his briefcase. He went back home then checked in to [REDACTED] and explained his situation. He waited for orders but was never given information. He stayed [REDACTED] for 4 days, went home on the weekend, and waited for a call. He was never called. He never intended to go absent without leave (AWOL) or be a deserter.

3. In a partially legible VA Form 21-4138, the applicant essentially reiterates that he lost his briefcase and orders in transit to his next duty station. *The VA Form 21-4138 was provided to the Board for their review and consideration.*

4. The applicant's available records contain a DD Form 214 (Report of Separation from Active Duty) showing he entered active duty in the Regular Army on 29 August 1973 and was honorably discharged on 18 June 1975 under the provisions of Army

Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-10 (Discharge for the purpose of immediate enlistment or reenlistment). He reenlisted on 19 June 1975 for a period of six years.

5. On 24 January 1978, the applicant received nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice, for being absent from his unit without authority during the period 3-4 January 1978.

6. On 14 June 1978, the applicant extended his enlistment for a period of two months to complete an overseas tour.

7. A letter from the Department of the Army Personnel Command addressed to the 1st Personnel Command, [REDACTED] (Germany), dated 4 June 1979, requested verification of the applicant's family members eligibility for medical care. On 30 July 1979, the 1st Personnel Command responded and stated the applicant was dropped from the rolls of the Army on 29 September 1978 and that his dropped from the rolls packet was forwarded to [REDACTED] on 14 June 1979.

8. A letter from the Chief, Records Services Division, dated 28 September 1982, addressed to the applicant's civilian address, subject: Discharge in Absentia, informed the applicant of the following:

a. A review of his military personnel records failed to produce a record of his discharge from the service. Available documentation indicated that he was in a status of desertion and was eligible for a discharge in absentia. It was anticipated that his discharge would be under other than honorable conditions.

b. Prior to the issuance of the discharge certificate, he was offered the opportunity to submit a statement explaining any extenuating, mitigating, or aggravating circumstances he felt should have a bearing on the type of discharge to be issued. If a reply to the letter was not received within 45 days from the date of the letter, action would be taken to effect his discharge.

9. There is no evidence in the applicant's available records indicating he submitted a statement explaining the circumstances surrounding his status as a deserter.

10. Orders Number 67-7, dated 23 May 1983, published by the U.S. Army Enlisted Records and Evaluation Center, [REDACTED] directed the applicant's discharge from the Regular Army effective 23 May 1983. The orders show his unit of assignment as 21st Adjutant General Replacement Detachment, [REDACTED] (Germany). The orders also show he was not entitled to pay and allowances for 3 January 1978 and from 30 August 1978 through 23 May 1983.

11. The applicant's DD Form 214 shows he was discharged on 23 May 1983 under the authority Army Regulation 635-200, chapter 14, by reason of misconduct-desertion, with an under other than honorable conditions character of service. The DD Form 214 also shows he accrued 1,720 days of lost time.

12. The applicant provided:

a. A statement from his brother (a Veteran of the Vietnam War) stating that in 1978, the applicant lost his records from the Army. He remembers the applicant told him about it and he told the applicant to call the Army office. The applicant was told that they would get back to him, but he never heard from them.

b. A VA Administrative Decision, Issue: Character of Discharge Determination, informing him that he is entitled to receive VA benefits for his period of honorable service from 29 August 1973 to 28 August 1975, but he is not entitled to VA benefits based upon his service from 29 August 1975 to 23 May 1983.

BOARD DISCUSSION:

The Board again carefully considered the applicant's request, supporting documents, 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. 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, the Board again determined the character of service the applicant received upon separation was not in error or unjust.

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 AR20190009758 on 16 September 2019.

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) sets forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 14 establishes policy and prescribes procedures for separating personnel for misconduct, because, of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.
 - b. Paragraph 2-15, of the regulation in effect at the time, states if the separation authority determines that separation is otherwise appropriate under this regulation, a member may be separated without return to military control if the member is absent without authority after receiving notice of initiation of separation processing.
 - c. Paragraph 3-7a states 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.

d. Paragraph 3-7b 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.

e. Paragraph 3-7c, a member beyond military control by reason of unauthorized absence may be issued an under other than honorable conditions discharge certificate in absentia.

2. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of evidence.

//NOTHING FOLLOWS//