

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 October 2024

DOCKET NUMBER: AR20240001509

APPLICANT REQUESTS: reconsideration of his previous request to upgrade his under other than honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Letter from Department of Veterans Affairs
- Special Orders 281
- DA Forms 2496 (Disposition Form)
- Self-Authored Statement dated 26 September 1974
- DD Form 214 (Report of Separation from Active Duty)
- Undesirable Discharge Certificate
- Department of the Army (DA) Certificate of completion date 3 Dec 1973
- Department of the Army (DA) Certificate of completion date 14 January 1974
- State of Texas Certificate of Birth
- DA Form 20 (Enlisted Qualification Record)
- DA Form 2-1 (Personnel Record Brief)
- DA Form 2627-1 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ))
- DA Form 2627-2 (Record of Appellate or Other Supplementary Actions Under Article 15 UCMJ)
- Standard Form 601 (Immunization Record)
- Standard Form 603 (Dental Record)
- Standard Form 93 (Report of Medical History)
- Standard Form 88 (Report of Medical Examination)
- 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 Army Board for Correction of Military Records (ABCMR) in Docket Number AR20230004713 on 3 November 2023.

2. The applicant states he volunteered to enlist in the Army during the Vietnam Era when he was 22 years old. He was married, and had a small child, his wife was pregnant, and his wife had three young children from a previous marriage. He did not have a high school diploma or a GED. He felt his special skills were weak, his character underdeveloped, his experience was a farm/rancher worker, and his future was unproductive and bleak. However, he believed that he could do better. He went to see an Army Recruiter and he advised him of all the benefits the Army could offer to help support a large family. He spoke with his father who served with honor during World War II, with 101st Airborne Division in the Battle of the Bulge, at Bastogne, about joining the Army. His father said it would be too difficult financially, mentally, and emotional for family, and advise against joining. He believed his father was right, however, he wanted to follow in his father's footsteps. His father died in April 2009, and is buried in a National Cemetery in Central California.

a. He went for his physical and took his oath and went to serve in the Army during the Vietnam ERA, which was a very difficult time to serve in the military. He did well in Basic Training and believes with his whole mind and heart, that if he had joined when he was 18 years old, he would have been a great soldier, and would have served with honor until retirement. He and his wife always had money problems, their marriage was not doing so well but he loved his wife, his son, and his wife's three children. While in the Army his marriage was getting worse. While he was stationed at Camp Hunter Liggett, CA, which was about 2 hours from his home, the Company Commander would not give me permission to live off base with his wife and children in Morgan Hill, CA. He wanted to save his marriage, but he did not know it then, that his wife had no plans to make their marriage work, until months later while in the stockade at Fort Ord, CA. He was given leave sometime in late 1974, and failed to return to his unit at Camp Hunter Liggett, CA. He was AWOL for 28 days. He had obtained employment and was working to support his family during that period. He had two previous AWOL'S, one in November of 1973 for 1 day, and one in April of 1974 for 6 days. His father was very disappointed with him because he was trying to save a bad marriage and because he was violating his oath to his country. He knew back then that any military personnel, went AWOL for more than 30 days, would be considered a Deserter. When he decided to return to his unit, his father drove him to Fort Ord. He had been AWOL for 28 days, when he turned himself in to the Military Police.

b. He was detained in the stockade at Fort Ord when his Company Commander came to see him, they discussed the reasons surrounding why he had gone AWOL, and the captain advised him that the Lieutenant (LT) would come to inform him on what would happen to him. The LT arrived and advised him that his 28 days AWOL and time in the stockade constituted desertion. The LT said that would be court marshaled, sent to prison for one year, and that he would be discharged from the Army under dishonorable conditions. He did not know it then but while in the stockade, he was under military control, and his company commander knew or should have known that he was

in the stockade. Then the LT said that maybe the Army would decide to retrain him and be allowed to remain in the Army. Lastly, the LT advised me that I could ask to be discharged from the Army, without a court martial or time in the stockade, and receive an Other Than Honorable Condition Discharge, and could be home in a few days. He advised the LT that he would have to think about it, and if he could come back the following day, he said no, that he needed an answer then, that day. He wanted to think about it because, He was already thinking about remaining in the Army, because in the civilian world there was nothing for him. Not knowing any better, and without legal counsel at that meeting with the LT, He advised the LT that he would ask to be discharge from the Army. That decision was a colossal mistake, which has been a black cloud over him since. He believes it was bigger than going AWOL, because asking for the discharge without legal counsel ended his Army service with a bad discharge.

c. He viewed the LT's offer as a "Plea Bragin" to ask for a discharge from the Army. A "Plea Bragin" without a lawyer present was incorrect. He believed if they wanted to help him, they could have discharged him under an Undue Hardship, because the size of his family. While waiting in the stockade for the next move, a Staff Sergeant (SSG) from his unit visited. He believed it to be a welfare check. The SSG began to explain his charges and options, and the SSG was surprised, when he advised him that he had already been to a Disciplinary Hearing. He advised the SSG that he would like to request to see the Company Commander or the LT. The SSG asked why he wanted to see the Captain or LT. He advised the SSG that he did not want to be discharged from the Army. He advised the SSG that he knew that his marriage was broken, and he was sorry for his negative behavior, and wanted to remain in the Army. He was prepared to take his punishment, and to be a good soldier. The SSG said no, that he was not going to bother the Captain or the LT, that it was too late and would go bad for him if, he changed his decision on requesting the discharge from the Army. He believed then and now that it was not too late, because he remained in the stockade for couple weeks after the SSG's visit.

d. During the Vietnam ERA in the army was very hard and difficult, compared today's army, there was a lot of drinking, Marijuana, drugs, and racism, among the ranks, known today as the Old Army. He is deeply ashamed of his early life, while in the Army that caused him to receive a bad discharge. While in the stockade, it gave him time to think about what he had done, and there he realized that the Army was his true home, and he wanted to stay in to serve his country. He believed that if the SSG would have given him the opportunity to speak with the Captain or the LT, his Army life would have been very different as well as his life today. He takes full responsibility for his behavior, but he believes he should have received more positive help, and not been forced to decide without legal counsel. He knows that this would not have happened in today's all volunteer/social/cultural Army or any other branch of service. He was discharged in October of 1974, his life was hard he drank a lot, smoke Marijuana, and was going down the tubes. Then he moved to Yuma, Arizona in 1981, he has been

married for almost 40 years in May. He had two daughters and 3 grandchildren. He truly believes that he has been blessed since he moved to Arizona, he earned his GED, he is a Certified Paralegal. He also is an active Arizona Real Estate Broker, he earned his M.B.A. and Graduation Certification in Human Services, from the University of Phoenix. In 1995, he had the honor of being the President of the Somerton Arizona Rotary Club, and at this time he managed a medium size Armed and Unarmed Private Security Company. It has been 49 years since he was discharged from the Army, his father and mother both have expired and buried at the San Joaquin National Cemetery in California.

3. The applicant provides:

a. A screenshot of a letter from Department of Veterans Affairs (VA) indicating the applicant was separated under honorable conditions from active-duty military service and entitled to compensation for service-connected disability(ies) which are at least 10 percent disabling, but less than 30 percent disabling.

b. A copy of special orders 281 showing the applicant was discharged on 15 October 1974.

c. A copy of Undesirable Discharge showing the applicant was discharged on 15 October 1974.

d. Two DA Certificates of training:

- Clerk Cours dated 3 December 1973
- Equipment Maintenance Clerk course dated 14 January 1974

e. A copy of his Certificate of Birth from the State of Texas.

f. A copy of his DA Form 2-1 that shows an Undesirable Discharge on 15 October 1974.

g. Copies of medical forms indicating the applicant was in good health:

- Standard Form 601 (Immunization Record)
- Standard Form 603 (Dental Record)
- Standard Form 93 (Report of Medical History)
- Standard Form 88 (Report of Medical Examination)

h. The following documents will be addressed in the applicant's service record:

- DA Forms 2496 (Disposition Form)

- Self-Authored Statement dated 26 September 1974
- DD Form 214 (Report of Separation from Active Duty)
- DA Form 20 (Enlisted Qualification Record)
- DA Form 2627-1 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ))
- DA Form 2627-2 (Record of Appellate or Other Supplementary Actions Under Article 15 UCMJ)
- ABCMR Letter

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

- a. He enlisted in the Regular Army on 27 July 1973.
- b. DA Form 20 (Enlisted Qualification Record) shows in item 44 (Time Lost Under Section 972, Title 10, USC and Subsequent to Normal Expiration Term of Service) the applicant was Absent without Leave (AWOL) from 23 May 1974 through 28 May 1974 for a total of 6 days and from 10 June 1974 through 13 August 1974 for a total of 65 days.
- c. DA Form 2627-1 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)), dated 6 November 1973, shows the applicant accepted Nonjudicial Punishment (NJP) for absenting himself from his unit without authority for the period 4-5 November 1973.
- d. DA Form 2627-1 dated 24 April 1974 shows the applicant accepted NJP for failing to go to his appointed place of duty. His punishment was reduction to private (PVT)/E-1.
- e. DA Form 2627-2 (Record of Appellate or Other Supplementary Actions Under Article 15, UCMJ), dated 29 May 1974, shows the suspension of punishment for reduction to PVT was vacated.
- f. The documentation showing the applicant went AWOL or being Dropped from Rolls (DFR) were not available for the Board's consideration. DA Form 4187 (Personnel Action) shows the applicant's duty status was changed from DFR to present for duty on 14 August 1974.
- g. DD Form 458 (Charge Sheet), dated 16 August 1974, shows the applicant's commander referred a charge of AWOL from on or about 10 June 1974 to on or about 14 August 1974, for the applicant to court-martial.
- h. On 20 August 1974, the applicant's commander provided a statement indicating on 14 August 1974, the applicant returned from 66 days of AWOL. He was asked why

the applicant went AWOL and the applicant stated he had family and financial problems that kept him from performing. The applicant had not asked for leave.

i. On 22 August 1974, the applicant's Trial Defense attorney, informed the applicant he was pending court-martial for being AWOL for 64 days. The applicant desired to submit a request for discharge for the good of the service. The memorandum informed the applicant of his rights concerning his request for discharge.

j. On 26 August 1974, 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
- may be deprived of his rights and benefits as a Veteran under both Federal and State law
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he may expect to encounter substantial prejudice in civilian life

k. On 26 September 1974, he submitted a request for withdrawal of Request for Discharge for the Good of the Service.

l. On 27 September 1974, consistent with the chain of command recommendations the request for withdrawal of Request for Discharge for the Good of the Service was disapproved.

m. On 6 October 1974, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge for the Good of the Service. He would be issued an Undesirable Discharge Certificate and reduced to the lowest enlisted pay grade.

n. On 15 October 1974, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 1 year and 8 days of active service with 71 days of lost time. It also shows he was awarded or authorized: Expert Marksmanship Qualification Badge with Rifle Bar.

5. On 4 April 1974, 17 November 1988, and 12 January 1989, the applicant was notified the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. On 27 October 1977, A memorandum for the Adjutant General, from the ABCMR, states the Board determined on 19 October 1977, insufficient evidence was presented to indicate a probable material error or injustice regarding the applicant's request to upgrade his discharge and the application was denied. The applicant's application and complete Board record are not available for the Board's consideration.

a. On 28 July 2006, the ABCMR rendered a decision in Docket Number AR20050017374. The Board determined that the request for reconsideration was not received within one year of the ABCMR's original decision. As a result, the request for reconsideration did not meet the criteria outlined and was returned without further action.

b. On 18 February 2011, the ABCMR rendered a decision in Docket Number AR20100025338. The Board determined that the request for reconsideration was the final administrative action taken by the Secretary of the Army. There is no further action contemplated by the ABCMR since you are not eligible for further reconsideration by this Board. Therefore, we are returning your request without action.

c. On 23 February 2012, the ABCMR rendered a decision in Docket Number AR20120000247. The Board determined that the previous request for reconsideration was acted upon in ABCMR Docket Number AR20050017374 on July 28, 2006, and Case Number AR20100025338 on February 18, 2011. These decisions on your request for reconsideration were the final administrative actions taken by the Secretary of the Army. There is no further action contemplated by the ABCMR since you are not eligible for further reconsideration by this Board. Therefore, we are returning your request without action.

d. On 3 November 2023, the ABCMR rendered a decision in Docket Number AR20230004713. 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 AR20120000247 on 23 February 2012.

7. By regulation, 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 for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

8. 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.

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 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 being absent without leave from 10 June 1974 to 14 August 1974, 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. Based on a preponderance of the evidence, the Board concluded that the characterization 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 the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. 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. (Honorable Discharge) states 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. (General Discharge) states 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. 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 for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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/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.

4. AR 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record; it is not an investigative body. 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 the evidence.

//NOTHING FOLLOWS//