

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 November 2024

DOCKET NUMBER: AR20240002488

APPLICANT REQUESTS:

- reconsideration of his request for upgrade of his under other than honorable conditions discharge
- a personnel appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 7 May 1981
- Self-Authored Statement

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 AR20060000616 on 15 August 2016.

2. The applicant states:

a. It was brought to his attention that he is unable to be buried at a Veterans cemetery with an under other than honorable conditions discharge. In 2023, his wife passed away after a short but hard battle with cancer. After her memorial he started thinking about his own passing and wanted to help his children prepare. He loves his country, and he loved his time serving. His brother also served in the Army and fought in Vietnam. The applicant and his brother would talk about being buried at the same cemetery together. They would joke that their spots would be near a pond so they could fish every day. He feels like he is letting his brother down. It also feels like the country is letting him down.

b. During his time in service, he was granted leave to go home because his mother was undergoing heart surgery. While home, he was approved for extension of his leave. His first sergeant assured him that he would file the paperwork. Then one day he was

picked up and charged with being absent without leave (AWOL). He was talked into signing paperwork that he didn't understand. He was told to apply for a hardship discharge, but he was told the paperwork was incorrect. No one would help him.

c. In June of 1980, he sustained an injury to his left knee that left him in the hospital for days. A Physical Evaluation Board made a decision stating that he should be warranted 10 percent (%) disability with severance pay. His request to continue on active duty was denied. He refused to leave the Army because he knew that he could continue to serve his country. He is not asking for any type of pension or health care. All he is asking for is to be able to be buried at a Veterans cemetery. Serving his country has always been an honor for him.

3. On 14 May 1980, the applicant enlisted in the Regular Army for 3 years. Upon completion of training, he was awarded military occupational specialty 11B (Infantryman).

4. On 16 October 1980, the applicant was reported as AWOL and remained absent until he returned to military control on 2 February 1981.

5. On 10 February 1981, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

6. The previous ABCMR record of proceedings indicates that on 23 February 1981 a Physical Evaluation Board (PEB) found the applicant unfit to perform the duties of a private/E-2 in a trainee status due to an injury to his left knee. The PEB found the injury to have been incurred in the line of duty and warranted a 10% disability evaluation. The PEB recommended that the applicant's request to continue on active duty be denied and that he be separated with severance pay.

7. The available record is void of any PEB documentation.

8. Court-martial charges were preferred against the applicant on 9 March 1981, for a violation of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of being AWOL

9. A Personnel Control Facility Interview Sheet, dated 10 March 1981, indicates the applicant stated he went AWOL because his mother was very sick and that he was the only one that could look after his mother.

10. On 11 March 1981, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible

punishment authorized under the UCMJ; the possible effects of a bad conduct discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

b. He declined to submit a statement in his own behalf.

11. On 24 March 1981, the applicant's commander recommended approval of his request for discharge, and further recommended the issuance of an under other than honorable conditions discharge. The commander noted that the applicant had no motivation for continued service and would not respond to either counseling or rehabilitation.

12. Consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge on 27 March 1981, and directed his reduction to the lowest enlisted grade with issuance of a DD Form 794A (Under Other Than Honorable Conditions Discharge Certificate).

13. The applicant was discharged on 7 May 1981. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for administrative discharge conduct triable by court-martial. His service was characterized as under conditions other than honorable. He was assigned Separation Code JFS and Reentry Codes 3, 3B. He completed 8 months and 8 days of active service with 108 days of lost time.

14. The applicant petitioned the ABCMR requesting upgrade of his discharge. On 15 August 2006, the Board voted to deny relief and determined the overall merits of the case were insufficient as a basis for correction of the applicant's records.

15. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

16. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency 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 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 an offense, 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 noted the applicant's contention that he was allowed to take the appropriate leave for his mother's surgery and based on the length of time that has elapsed, the Board found relief was warranted to upgrade his characterization of service to under honorable conditions (General).

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 relief. 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 7 May 1981, to show his characterization of service as under honorable conditions (General).

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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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. 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 the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

c. 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.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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 the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

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/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.

//NOTHING FOLLOWS//