

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 November 2024

DOCKET NUMBER: AR20240002950

APPLICANT REQUESTS: reconsideration of his earlier request for upgrade of his under other than honorable conditions discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record), 7 January 2024

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 AR2003097076 on 25 May 2004.

2. The applicant states he has been out of the service for 48 years and has never gotten into trouble. He was unfairly forced to take a dishonorable discharge. He did not understand the ramifications of this outcome. He is in the Dominican Republic and just became aware of how to fix this discharge.

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

a. On 9 August 1974, he enlisted in the Regular Army for 3 years. A DA Form 3286 (Statements for Enlistment) reflects he entered into an agreement to undergo training in military occupational specialty (MOS) 64C (Motor Transport Operator).

b. On 9 December 1974, he was promoted to private/E-2, following completion of training in MOS 64C.

c. On 19 November 1975, court-martial charges were preferred against him. A DD Form 458 (Charge Sheet) shows he was charged with one specification of being absent without leave (AWOL) from 4 March 1975 to 17 November 1975.

d. After consulting with legal counsel on 20 November 1975, he voluntarily requested discharge for the good of the service, 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 not been subjected to coercion with respect to his request for discharge
- 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 to do so

e. On the same date, the Commander, U.S. Army Personnel Control Facility, Fort Dix, recommended approval of his request with issuance of an Undesirable Discharge Certificate. In his recommendation, his unit commander referenced one prior nonjudicial punishment (NJP) given to him however the record of this NJP and any punishment given to him is not present in the available records. He further noted the applicant returned to military control after surrendering the military authorities.

f. On 2 December 1975, the separation authority approved the applicant's request for separation under the provisions of Chapter 10, Army Regulation 635-200 for the good of the service. He further directed issuance of an Undesirable Discharge Certificate and reduction to the lowest grade.

g. On 10 December 1975, 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, with separation program designator of KFS, and reentry eligibility code 4. His service was characterized as under other than honorable conditions. He completed 1 year, 4 months, and 2 days of active service with 257 days' time lost. He was awarded the National Defense Service Medal, and Expert Marksmanship Qualification Badge with Rifle Bar (M-16), and Hand Grenade Bar.

4. On 25 May 2004, in ABCMR Docket Number AR2003097076 the Board found there was no evidence in the available records to demonstrate that record was unjust or that his discharge should be upgraded. His request for relief was denied.

5. There is no evidence of record that he applied to the Army Discharge Review Board for an upgrade of his discharge within that Board's 15-year statute.
6. The Board should consider the applicant's overall military service and statement 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 4 March 1975 to 17 November 1975, 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 amendment of the ABCMR decision rendered in Docket Number AR2003097076 on 25 May 2004.

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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 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. Chapter 1-9 provided:

(1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Only the honorable characterization may be awarded a member upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

b. Chapter 10 stated a member who has committed an offense or offenses, the punishment of which under the UCMJ and the Manual for Court Martial, 1969 (Revised Edition) includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, or, where required, after referral, until final actions by the court-martial convening authority.

(1) A medical examination is not required but may be requested by the member under Army Regulation 40-501 (Medical Services – Standards of Medical Fitness), chapter 10. A member that requests a medical examination must also have a mental status evaluation before discharge.

(2) Commanders will insure that a member will not be coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. Consulting counsel will advise the member concerning:

- the elements of the offense or offenses charged
- burden of proof
- possible defenses
- possible punishments
- provisions of Chapter 10
- requirements of voluntariness
- type of discharge normally given under provisions of Chapter 10
- rights regarding the withdrawal of the member's request
- loss of Veterans Administration benefits
- prejudice in civilian life because of the characterization of the discharge

(3) The separation authority will be a commander exercising general court-martial jurisdiction or higher authority. However, authority to approve discharges in cases in which a member has been AWOL for more than 30 days and has been dropped from the rolls of his or her unit as absent in desertion, and has been returned to military control, may be delegated to the commander exercising special court-martial convening authority over the member.

(4) An under other than honorable discharge certificate normally is appropriate for a member who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate if such is merited by the member's overall record during the current enlistment.

2. Army Regulation 635-5-1 (Separation Program Designators), in effect at the time (20 May 1974), listed the specific authorities and reasons for separation of all members of the Active Army, Army National Guard, and U.S. Army Reserve. The SPD KFS corresponded to the authority Army Regulation 635-200, Chapter 10 and the narrative reason, "Conduct Triable by Court-Martial."

//NOTHING FOLLOWS//