

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 January 2025

DOCKET NUMBER: AR20240003188

APPLICANT REQUESTS: reconsideration of his earlier request for upgrade of his undesirable discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
Self-authored statement, dated 12 March 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 AR20240007818 on 16 February 2024.
2. The applicant states, in effect:
 - a. There was no attempt at providing him counseling for his drug addiction. He believes that if he were an officer, he would have been offered some assistance to overcome his drug addiction to cocaine or heroin.
 - b. He was not addicted to cocaine or heroin before he arrived in Vietnam, and no one offered him any type of examination to determine if he was being truthful concerning his drug use. He was deemed unfit because of his drug addiction. His mind was altered after he went to Vietnam and he became addicted to cocaine and heroin.
 - c. His commander noted he contributed nothing towards the accomplishment of the battalion mission but it was based solely on his drug addiction. No one saw a need to help him but instead looked at him as garbage that should be disposed of. It had nothing to do with his unfitness or his willingness to contribute something towards the battalion mission.
 - d. There were two examples of his willingness to contribute to the battalion mission. One night he was on guard duty and saw what he believed to be the muzzle fire from an enemy's weapon so he engaged fire from a .50 caliber machine gun and he was told the next day it was a mountain lion. Another example was while he was on guard duty when

he received incoming fire from the enemy. He and his captain returned fire towards the enemy along with all the other Soldiers as they were ordered to do.

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

- a. On 24 February 1970, he enlisted in the Regular Army for 3 years.
- b. he completed Basic Combat Training, and he completed Advanced Individual Training and he was awarded military occupational specialty 94B (Cook).
- c. On 26 June 1970, he deployed to Vietnam and he was first assigned to a U.S. Army Depot on 31 July 1970 as first cook.
- d. On 22 July 1970, he was promoted to private first class (PFC)/E-3.
- e. d. On 17 September 1970 he was reassigned to Headquarters and Headquarters Company (HHC), 184th Ordnance Battalion, Vietnam in the duty role of first cook.
- f. On 16 October 1970, the Commanding Officer, HHC, 184th Ordnance Battalion, provided a statement concerning his duty performance, noting that he was a substandard Soldier and he considered him unfit for further military service. He was continually absent from morning formations, his personal appearance was far below that expected of a Soldier, he was apathetic and he could not or would not train for any job or work at any job. He could not adjust to military life and his moral character was deficient as evidenced by his admitted heavy use of drugs.
- g. On 17 October 1970, the applicant was provided this statement and he was given an opportunity to respond to this statement elected not to provide a written statement.
- h. On the same date, his commanding officer initiated a bar to reenlistment and forwarded it to the Commanding Officer 184th Ordnance Battalion; on 22 October 1970, the Judge Advocate General reviewed and found the barring action legally sufficient.
- i. On 26 November 1970, he accepted field grade nonjudicial punishment (NJP) under the provisions of Article 15 the Uniform Code of Military Justice (UCMJ) for willfully disobeying an order, being disrespectful in language and deportment towards, and wrongfully communicating a threat towards his first sergeant and superior noncommissioned officer on 3 October 1970. His punishment consisted of reduction to rank/pay grade of private/E-1, forfeiture of \$70.00 per month for 2 months, and restriction to Camp Humper for 60 days.

j. On the same date, his company commander advised him that he was recommending his discharge under the provisions of Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), paragraph 6a(1) by reason of unfitness with an undesirable discharge and notified him of his rights. His commander noted his action was based upon his commission of petty offenses, apathy, and inability to expend efforts constructively. He understood he had a right to present his case before a board of officers, to submit statements in his own behalf, to be represented by counsel, and to waive his rights in writing. In this notification his commander listed the incidents and the counseling and he had received for:

- being off limits on 24 September 1970 by his first sergeant
- resentment of authority, lack of discipline, and appearance on 26 September 1970 by his company commander and first sergeant
- being absent without leave (AWOL) and resentment of authority and inadequate appearance on 28 September 1970 by his company commander and first sergeant
- being apprehended by military police for disorderly conduct, disobeying a direct order, and communicating a threat on 1 October 1970 and on 2 October 1970
- being picked up at combined police station at Phi Tai to be escorted back to his unit on 3 October 1970
- being off limits, AWOL, and apprehended by military police on 7 October 1970
- lack of discipline, resentment of authority, appearance, repeated AWOL on 10 October 1970 by company commander and first sergeant
- being off limits, AWOL, lack of discipline, disorderly conduct, resentment of authority, appearance, disrespect for NCOs and commissioned officers on 26 October 1970
- being apprehended by military police for being off limits, AWOL, disrespectful towards a commissioned officer, and disorderly conduct on 4 November 1970

k. On 5 November 1970, he underwent a psychiatric evaluation for the purpose of chapter separation. The examining psychiatrist noted no psychiatric disease. He reported the applicant was evaluated on 6 October 1970 and at that time he was not considered to be a candidate for an Army Regulation 635-212 discharge. Since then, he had gone AWOL once, and an administrative action was pending for disrespectful language to an NCO and a commissioned officer. He was not motivated for further service and if he continued in the military, he would cause more problems for himself and for his unit. The examiner further noted he was mentally responsible and able to distinguish between right and wrong and adhere to the right. He had the mental capacity to understand board and judicial proceedings and participate in his own defense. He was not suffering from an incapacitating mental illness that warranted medical separation under the provisions of Army Regulation 40-501. If administrative separation

was implemented, the decision should be based on an evaluation of his conduct and not on the psychiatric diagnosis rendered in his report.

I. On 6 November 1970, his company commander recommended he be required to appear before a board of officers for the purpose of determining whether or not he be discharged before the expiration of his term of service. His commander recommended his discharge because of frequent incidents of a discreditable nature with military authorities, resentment of authority, repeated absences without leave, immaturity, lack of discipline, inadequate appearance, and disrespectful language towards noncommissioned officers and commissioned officers.

m. On 7 November 1970, he accepted NJP under the provisions of Article 15 of the UCMJ for being off limits at Nguyen Huu Loc Street, Qui Nhon, on 7 August 1969; and for violating a lawful general regulation by having his sleeves of his jungle fatigues cut off. His punishment consisted of forfeiture of \$25.00 for 1 month.

n. On 12 November 1970, he met with counsel and acknowledged receipt of his commander's notification memorandum and his contemplated action to separate him for unfitness under authority of Army Regulation 635-212 and he elected his rights. After having been counseled, he:

- waived consideration of his case by a board of officers
- waived a personal appearance before a board of officers
- elected not to submit statements in his own behalf
- waived representation by military counsel
- understood he may expect to encounter substantial prejudice in civilian life in the event a general discharge under honorable conditions were issued to him
- he understood that as a result of issuance of an undesirable discharge under conditions other than honorable, he may be ineligible for many or all benefits as a veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life

o. On 14 November 1970, his intermediate commander recommended approval of his discharge and he recommended waiver of further rehabilitative transfer attempts.

p. On 23 November 1970, he underwent a medical examination and gave a report of medical history. He reported vision trouble, loss of weight, though not significant; foot trouble; trouble sleeping; depression and he did not take orders from other people; nervous trouble; narcotic habit from sniffing cocaine, but difficulty obtaining it. The examining physician noted he was qualified for discharge.

q. On 27 November 1970, the next intermediate commander recommended waiver of rehabilitative reassignment and approval of his separation.

r. On 1 December 1970, his battalion commander approved waiver of rehabilitation transfer.

s. On 2 December 1970, the separation authority, approved his discharge from the Army under the provisions of Army Regulation 635-212, paragraph 6a(1) because of unfitness and directed issuance of an Undesirable Discharge Certificate.

t. On 3 December 1970, he departed from Vietnam and returned to the Continental United States.

u. On 8 December 1970, he was discharged. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under the provisions of Army Regulation 635-212, with a characterization of service of under other than honorable conditions. It shows that during this period he completed 9 months and 11 days of active service with 4 days' time lost under Title 10, U.S. Code, Section 972 from 7-11 November 1970. His rank/pay grade show private/E-1 and he was awarded or authorized:

- National Defense Service Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with Device (1960)

4. The Army Discharge Review Board considered his application for upgrade on three occasions; 19 June 1972 and 14 September 1978, during records reviews; on 27 January 1983 during an appearance hearing and determined in each instance that his discharge was both proper and equitable.

5. On 16 February 2024, and in Army Board of Correction of Military Records Docket Number AR20230007818, the Board determined the character of service the applicant received upon separation was not in error or unjust.

6. 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:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense Policy for consideration of discharge upgrade requests, the Board found relief was not warranted.
2. The Board carefully considered the applicant's contentions, his record of service, his service in Vietnam, the frequency and nature of his misconduct, the reason for his separation and the character of service he was issued upon separation. The applicant did not provide, and the records did not contain evidence of in-service or post-service mitigating factors for the misconduct sufficient to support liberal consideration. The applicant did not provide evidence of post-service achievements or character references to be considered in support of a clemency determination. Based on a preponderance of evidence, the Board determined that 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 the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

[REDACTED]

[REDACTED]

[REDACTED]

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 (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 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.
2. Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), in effect at the time, set forth the basic authority for the separation of enlisted personnel for unfitness and unsuitability.
 - a. Paragraph 4a provided an individual separated by reason of unfitness would be furnished an Undesirable Discharge Certificate except that an Honorable or General Discharge Certificate might be awarded if the individual being discharged was awarded a personal decoration or if warranted by the particular circumstances in a given case.
 - b. Paragraph 5b provided commanders exercising general court-martial jurisdiction were authorized to convene boards of officers for unfitness and unsuitability and to order separation.
 - c. Paragraph 6a(1) provided members involved in frequent incidents of a discreditable nature with civil or military authorities were subject to separation for unfitness. An undesirable discharge was normally considered appropriate.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set 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 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 Soldier 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.

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. 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.

4. Army Regulation 635-5 (Separation Documents) This regulation prescribed the separation documents that would be furnished each individual who was separated from the Army including Active Duty Training personnel and established standardized procedures for the preparation and distribution of these documents. All available records would be used as a basis for the preparation of the DD Form 214, including DA Form 20, DA Form 66, and orders.

a. Item 11c (Reason and Authority), except as indicated in b below, the authority for transfer or discharge will be entered in this item by reference to the appropriate regulation, circular, bulleting, special separation directive, statute, etc., followed by the Separation Program Number (SPN) and descriptive reason for transfer or discharge.

b. The SPN 28B corresponded with the authority Army Regulation 635-212 and the narrative reason-Unfitness-Frequent Involvement in Incidents of a Discreditable Nature Civil or Military Authorities

//NOTHING FOLLOWS//