

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 December 2024

DOCKET NUMBER: AR20240004009

APPLICANT REQUESTS:

- reconsideration of his earlier request for upgrade of his under other than honorable conditions discharge to honorable
- a change of the narrative reason for separation to secretarial authority

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

- DD Form 149 (Application for Correction of Military Record), 12 February 2024
- Counsel 13-page Statement, undated
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 18 December 1968
- DD Form 4 (Enlistment Contract-Armed Forces of the United States), 27 August 1971
- letter of Support, RW____, Sr Pastor, 1 October 2020
- two letters of Support, MC____ and GRM____, 5 March 2023

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 AR2003084220 on 1 May 2003.

2. The applicant states, through counsel:

a. He first enlisted in 1967, he received an honorable discharge, and he reenlisted in 1971. He was awarded a National Defense Service Medal and a 1-year Safe Driver Badge with W (Wheeled Vehicles) Bar. He attained specialist 4/E-4 and completed a leadership course.

b. He began a monthly \$250.00 allotment for his sister and was then ordered to deploy to Vietnam. This is where he first noticed he was still receiving his full pay although the allotment was still being paid to his sister. He notified payroll services of the error on three different occasions and each time they said they would fix the issue.

After 6 months the problem still was not resolved. He was ordered to Fort Hood and went to payroll twice again to notify them of the issue. The issue was still not corrected, and the funds were not garnished from his check.

c. In November 1972, he married and directed an allotment of \$160.00 to his wife. He had two children and became the sole provider for his family. In January 1973, his commander told him to go to payroll. They gave him two choices: to either pay all the money back at once or the money would be taken out of each paycheck. Since he did not have much time left on active duty, the entirety of his future paychecks would be deducted. Payroll advised him to reenlist to make it easier for him to pay. His company commander told payroll he was not reenlistment material.

d. He took two weeks of leave to take his family to North Carolina to visit his parents. While there he went to Fort Bragg and requested to be transferred so he could be closer to his family, but his request was denied. After being denied a transfer and being told he would no longer receive pay, he decided to leave the unit without authorization. He received nonjudicial punishment for going absent without leave (AWOL).

e. Fort Bragg told him to report to Fort Hood where he would spend the next 30 days in confinement. He was told he would be tried before a military judge. He signed an agreement for an undesirable discharge believing he could receive Veteran's benefits for his first period of honorable service.

f. His chain of command committed material errors by not resolving his payroll problems much sooner and by issuing an undesirable discharge under his AWOL circumstances. The applicant regrets the allegations against him that led to his command believing that he fell below the standard of performance. He valued his military experience for the years he served and is remorseful that his actions caused his command to question his judgement. He acknowledges the mistakes he made decades ago but he maintains that the proper context is needed to fully understand the circumstances surrounding the misconduct allegations.

g. Overall, the applicant's unit and chain of command misused their discretion and simply failed a good Soldier. He attempted to address the payroll issue three times in Vietnam and even after he returned from deployment.

I. The applicant's post service moral character is outlined by several who know him in various capacities and have written character memoranda.

3. The applicant provides:

- a. Service records consisting of 23 pages of documents, partially outlining his service.
- b. Three letters of support from people who speak of his post-service accomplishments. His Senior Pastor notes he is an astounding man of God who possesses great leadership qualities and is very hardworking. Another letter notes he has worked for a disaster relief for 3 years since the pandemic and has delivered thousands of pounds of food to the disaster relief program and has expended at least 15 hours a week without compensation. Another letter from a friend at the disaster relief program notes he met the applicant through the program, and he collaborates on a variety of activities in the community.

- c. A letter the applicant wrote to the Secretary of the Army, notes his request for an upgrade in early 2002, outlining the events leading to his discharge.

4. A review of the applicant's service records reflect:

- a. On 5 January 1967, he enlisted in the Regular Army for 2 years.
- b. On 18 December 1968, he was honorably released from active duty in the rank of specialist 4/E-4, and transferred to the control of the U.S. Army Reserve Control Group (Reinforcement). He completed 1 year, 11 months, and 14 days of net active service of which 1 year, 6 months, and 22 days of this service was in Germany. He was awarded the National Defense Service Medal, Marksman Marksmanship Qualification Badge with Rifle Bar (M-14), and a Safe Driver Badge with W (Wheeled Vehicles) Bar.
- c. On 27 August 1971, he reenlisted in the Regular Army for 3 years beginning in the rank of private first class (PFC)/E-3.
- d. He completed service in Vietnam from 7 September 1971 thru 23 March 1972 (6 months and 17 days) and he was assigned to B Battery, 5th Battalion, 42d Artillery in the principle duty of cannoneer.
- e. On 17 April 1973, he accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform code of Military Justice (UCMJ) for leaving his post on 4 April 1973 as Charge of Quarters Runner before being regularly relieved. His punishment consisted of a \$20.00 forfeiture for 1 month. He did not appeal this punishment.
- f. On 1 April 1976, court-martial charges were preferred against him. A DD Form 458 (Charge Sheet) reflects he was charged with two specifications of violation of Article 86 of the UCMJ from Personnel Control Facility Detachment, Headquarters Command, XVIII Airborne Corps, Fort Bragg:

(1) Specification 1: AWOL from on or about 15 October 1973 until on or about 31 March 1976, for 899 days; and

(2) Specification 2: AWOL from on or about 18 August 1973 until on or about 10 October 1973, for 53 days.

g. After consulting with counsel on 1 April 1976, he voluntarily requested discharge for the good of the service, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In doing so, he acknowledged that the charges preferred against him 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 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 would forfeit all accrued leave and be reduced to the lowest grade of E-1
- 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

h. On the same date, he provided a written statement in which he noted, he was married and had two children and had more bills than he could handle. He was the only working person in his family. One reason he did not return on his own was that he only had 2 months to pay off \$400.00 and he needed to make \$100.00 a month to pay off his trailer (home). He was requesting a discharge so he could spend the time with his family and not spend time away from them.

i. On the same date, he underwent a medical examination and gave a report of medical history. He noted he was in good health and the examining physician found he was medically qualified for separation.

j. On 1 April 1976, in connection with his medical examination, he underwent a mental status evaluation. A DA form 3822-R (Mental Status Evaluation) reflects the examining psychiatrist found his behavior normal, he was fully alert, he was fully

oriented, and his mood was level with clear thinking process and normal thought content. The examiner determined he had no significant mental illness, was able to distinguish between right and wrong and able to adhere to the right; he had the mental capacity to understand and participate in board proceedings.

k. His immediate commander and his intermediate commanders recommended approval of his request with issuance of an Undesirable Discharge Certificate on 6 April 1976 and 7 April 1976, respectively.

l. On 28 April 1976, the separation approval authority approved his request with issuance of an Undesirable Discharge Certificate, and directed he be reduced to the lowest enlisted rank.

m. On 19 May 1976, he was discharged. His DD Form 214 (Report of Separation from Active Duty) reflects he was discharged under the provisions of Army Regulation 635-200, Chapter 10, by reason of conduct triable by court-martial, with a character of service of under other than honorable conditions, a separation code of KFS, and a reenlistment code 4. His DD Form 214 further indicates:

(1) item 4a (Grade, Rate, or Rank) – PV1;

(2) item 18a (Record of Service-Net Active Service this Period), he completed 2 years, 1 months, and 13 days net active service this period;

(3) item 18b (Record of Service-Prior Active Service), he completed 1 year, 11 months, and 14 days of prior active service;

(4) item 21 (Time Lost): 618 days;

(5) item 26 (Decorations, Medal, Badges, Citations, and Campaign Ribbons Awarded or Authorized):

- National Defense Service Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with Device (1960)
- Safe Driver Badge with (W) Bar

(6) item 27 (Remarks): in part, 364 days lost under title 10 U.S. Code Section 972; 42 days excess leave.

5. On 1 May 2003, in ABCMR Docket Number AR2003084220, the Board found the applicant failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice.

6. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination 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 not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's request and the available military records, the Board determined that there is insufficient evidence of in-service mitigating factors to warrant an upgrade of the applicant's discharge or a correction of the narrative reason for separation to Secretarial Authority.
2. While the Board acknowledges the applicant's honorable service from 5 January 1967 to 18 December 1968 and his subsequent reenlistment on 27 August 1971, it finds no basis to reverse its previous determination. The applicant's under other than honorable conditions discharge was the result of prolonged unauthorized absences totaling over 950 days, culminating in his voluntary request for discharge in lieu of trial by court-martial under, Chapter 10. The Board determined, at the time of separation, the applicant was fully advised of the consequences and voluntarily admitted to the misconduct. The applicant's discharge was administratively and legally appropriate, and the narrative reason, "conduct triable by court-martial", accurately reflects the circumstances surrounding his separation. The Board agreed that the applicant has not submitted new, compelling evidence of error or injustice. Therefore, relief is denied.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>
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:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR2003084220 on 1 May 2003.

 //SIGNED//_____
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 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 635-200 (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 3-7 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.

3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "KFS" corresponded to "Conduct Triable by Court-Martial," and the authority, Army Regulation 635-200, chapter 10.

4. 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), on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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 on the basis of equity, injustice, or clemency grounds, Boards 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.

//NOTHING FOLLOWS//