

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 October 2024

DOCKET NUMBER: AR20240004130

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of 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)

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 AR20050001849 on 26 October 2005.
2. The applicant states the correction should be made because his younger brother and baby sister had dropped out of school and he had one more baby sister in school, and he was there to help her complete her education, so she was able to go to college.
3. The applicant enlisted in the Regular Army on 19 July 1976.
4. On 17 April 1978, he was punished under Article 15, Uniform Code of Military Justice (UCMJ), for failure to remain at his assigned guard post on 15 April 1978. His punishment consisted of a reduction to pay grade E-3 (suspended for 60 days).
5. Court-martial charges were preferred against the applicant on 6 February 1979, for being absent without leave (AWOL) from 21 July 1978 to 29 January 1979.
6. The applicant underwent a separation medical examination on 7 February 1979. He was found to be in good health and was qualified for separation.
7. The applicant underwent a mental status evaluation on 7 February 1979, which determined that he could distinguish right from wrong and that he possessed sufficient mental capacity to participate in administrative or judicial proceedings. It also indicated that he was alert, oriented, and that his thought process was intact. The applicant had no disqualifying mental defects sufficient to warrant disposition through medical channels.

8. On 7 February 1979, he consulted with counsel and voluntarily requested discharge, for the good of the service, in lieu of trial by court-martial, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. In doing so, he acknowledged that he might encounter substantial prejudice in civilian life and might be ineligible for many or all benefits administered by the Veterans Administration (VA), and that he may be deprived of his rights and benefits as a veteran under both Federal and State Law if an undesirable discharge were issued. He also understood that he may expect to encounter substantial prejudice in civilian life because of an under other than honorable discharge. He waived his rights and elected not to submit a statement in his own behalf.

9. On 8 February 1979, his immediate commander recommended approval of his request for discharge in lieu of court-martial and issuance of an Under Other Than Honorable Discharge Certificate.

10. On 15 February 1979, the separation authority approved the applicant's request for discharge and directed that he be furnished an Under Other Than Honorable Discharge Certificate and that he be reduced to the lowest enlisted grade.

11. The applicant was discharged on 22 February 1979. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of AR 635-200, chapter 10, in the rank and grade of private/E-1, and his service was characterized as under other than honorable conditions. He had a total of 2 years and 26 days of net active service this period and 188 days of lost time due to AWOL (from 21 July 1978 – 28 January 1979).

12. The applicant applied to the Army Discharge Review Board (ADRB) for an upgrade of his discharge. The ADRB determined that his discharge was proper and equitable and denied his request on 19 March 1982.

13. On 26 October 2005, the ABCMR considered his previous case (AR20050001849) and determined the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of the case were insufficient as a basis for correction of the records of the individual concerned. His request for upgrade was denied.

14. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of

guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

15. 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 partial 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 absenting himself from his unit from 21 July 1978 to 29 January 1979, 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 majority was convinced by a preponderance of the evidence, specifically, the applicant's statement of his assistance in his siblings' education to warrant an upgrade to under honorable conditions (General). The Board minority was not convinced by a preponderance of the evidence that relief was warranted as the applicant provided no record of post-service accomplishments or letters of reference in support of clemency.

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 partial 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 15 April 1971 to show an under honorable conditions (General) characterization of service.

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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 (AR) 635-200 (Personnel Separations-Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

a. Paragraph 3-7a (1) 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) 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. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

2. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and 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. 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, 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. 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//