

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 January 2025

DOCKET NUMBER: AR20240004796

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (General).

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- DA Form 873 (Certificate of Clearance and/or Security Determination)
- Two Unit Orders 15 and 41
- Two Enlisted Efficiency Reports
- DD Form 214 (Report of Separation from Active Duty)
- Five Certificates
- Workforce Development Platform Form
- Two Character letters

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 AR20200005871 on 8 September 2020.

2. The applicant states:

- a. He was a motivated and committed Soldier. His mother who was a single parent became very ill and was placed in the hospital. His pay did not do much to help pay her bills. He began taking drugs to cope. He had orders to Korea and went home for 30 days and returned on three occasions for his port call and it was not there, so he decided to stay home and get a job to pay the bills and support his drug habit.
- b. Once he reported back to the military he was given few options. His mother had died as a result of a suicide, his drug use increased, and he ended up in prison.

Since being in prison, he has devoted his time and efforts to self-improvement and assisting guiding young men in a positive direction. He has been clean of all drug use for 40 years and he is once again focused, as he once was as a young man who enlisted to serve his country.

3. The applicant provides:

- a. Certificates of appreciation and achievement(s) which show his level of commitment to correctional institutions, supporting the community, education, and self-improvement.
- b. Workforce Development Platform form, undated shows programs the applicant attended and his volunteer history.
- c. Character letters that attest to his high level of humanity towards others and character to volunteer in his community and organizations. He has overcome drug addiction and has been on the road to rebuild his life for the better. With the skills he has acquired during his incarceration will set him up for success when he is eligible for parole.

4. A review of the applicant's service record shows:

- a. He enlisted into the Regular Army on 29 September 1972.
- b. His DA Form 2166-4 (Enlisted Efficiency Report), 22 January 1974 shows he lacked a desirable attitude, initiative, and leadership while he also experienced domestic, financial difficulties, and he performed assigned duties, however, required constant supervision.
- c. The applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on:
 - 11 April 1974 for without authority, failing to go at the time prescribed to his appointed place of duty on or about 5 April 1974; his punishment consisted of forfeiture of \$25.00 for one month
 - 8 May 1974 for without authority, absenting himself from his unit on or about 2 May 1974 until on or about 6 May 1974; his punishment consisted of reduction to private 2/E-2 (suspended for 4 months) and forfeiture of \$75.00 for one month
- d. His DA Form 31 (Leave Form), 16 May 1974, shows he departed for 30 days leave on 16 May 1974.

- e. His DA Form 2166-4, 29 May 1974 shows he performed assigned duties, however, required constant supervision.
- f. Document, Subject: Personnel Control Facility, undated shows the applicant was reported absent without leave (AWOL) on 29 June 1974.
- g. Special Orders Number 68, 8 April 1975 and DA Form 4187 (Personnel Action) shows he returned to military control (RMC) from an AWOL status on 5 April 1975 after being dropped from rolls (DFR) by his unit (4th Signal Group) and was sent to the restricted company in Ft Meade, MD.
- h. On 7 April 1975, the applicant was interrogated by military personal, He was given his Maranda Rights and waived his right to counsel. He initialed that he did not want to answer any questions or make any statements.
- i. On 8 April 1975, the applicant voluntarily requested a discharge under the provision of Army Regulation 635-200 (Personnel Separations-Enlisted Separations), Chapter 10, in lieu of trial by court-martial. 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 an undesirable discharge; the procedures and rights that were available to him.
 - (1) 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 Department of Veteran Affairs, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life if discharged under a UOTHC discharge and furnished an Undesirable Discharge Certificate.
 - (2) The applicant was advised that he could submit statements on his own behalf, which would accompany his request for discharge. Statements in his own behalf are not submitted with his request.
- j. On 24 April 1975, the applicant's commander recommended him to be separated from the U.S. Army under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10, for the good of the service. He was triable by court-martial under circumstance that could lead to a Bad conduct or Dishonorable Discharge. He was recommended to receive an Undesirable Discharge Certificate.
- k. The separation approval authority memorandum is not available for the Board's review.

I. The applicant was discharged on 8 May 1975. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service-in lieu of trial by court-martial with Separation Program Designator (SPD) of KFS and reenlistment code 3. His service was characterized as under other than honorable conditions. He completed 1 year, 9 months, and 21 days net active service. He had lost time of 289 days. He was awarded or authorized the:

- National Defense Service Medal
- Sharpshooter Marksmanship Qualification Badge with Rifle bar (M-14)
- Marksman Marksmanship Qualification Badge with Rifle bar (M-16)

5. In a prior ABCMR Docket Number AR20200005871 on 8 September 2020, the Board determined 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 applicant's records.

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 guidance.

7. Chapter 10 of the version in effect at the time provided that a member who 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 at any time after court-martial charges were preferred.

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 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 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 correction of the records of the individual concerned.

5/5/2025



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 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.
 - 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 Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 10 of the version in effect at the time provided that a member who 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 at any time after court-martial charges were preferred. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses charged, type of discharge normally given under the provisions of this chapter, the loss of Veterans Administration benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. An Undesirable Discharge Certificate would normally be furnished an individual who was discharged for the good of the Service.
2. Army Regulation 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The information entered thereon reflects the conditions as they existed at the time of separation. It states for:
 - a. Block 9c (Authority and Reason), is based on regulatory or other authority and can be checked against the cross reference in Army Regulation 635-5-1 and the narrative reason for separation will be entered as provided in Army Regulation 635-5-1
 - b. Block 9e (Character of Service) characterization or description of service is determined by directives authorizing separation. Proper completion of this block is vital since it affects the Soldier's eligibility for post-service benefits. Only six standard

characterizations in this block are authorized: honorable, under honorable conditions (general), under other than honorable conditions, bad conduct, dishonorable and uncharacterized.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The SPD KFS (is to be used for RA Soldiers discharged for the good of the service-in lieu of trial by court martial).

4. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the SPD code KFS has a corresponding RE Code of "3."

5. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

6. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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//