

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 January 2025

DOCKET NUMBER: AR20240004798

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

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 AR20140018305 on 25 June 2015.
2. In a new argument, the applicant states he was never allowed to discuss his situation. He had issues with his first sergeant prior to his release.
3. On 20 June 1967, the applicant enlisted in the Regular Army. Upon completion of training, he was awarded military occupational specialty (76Q) Special Purpose Equipment Parts Specialist. The highest grade he attained was E-5.
4. He served in the Republic of Vietnam from 2 November 1967 to 2 June 1969.
5. On 7 September 1969, the applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for missing bed check, on or about 30 August 1969. His punishment included forfeiture of \$10.00 pay.
6. He was honorably discharged on 17 September 1969. His DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) confirms he completed 2 years, 2 months, and 28 days of active service this period.
7. He reenlisted on 18 September 1969, for 6 years.
8. On 9 March 1970, the applicant accepted NJP under Article 15 of the UCMJ, for disobeying a lawful order issued by his first sergeant, on or about 7 March 1970; and absenting himself from his unit for 50 minutes, on or about 9 March 1980. His

punishment included forfeiture of \$40.00 per month for one month and 14 days extra duty and restriction.

9. On 9 May 1970, the applicant accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty, on or about 2 May 1970, and on or about 6 May 1970. His punishment included reduction in grade to E-3, and forfeiture of \$50.00 per month for one month.

10. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. However, a DA Form 268 (Report for Suspension of Favorable Personnel Actions) dated 23 June 1970, shows the applicant was pending elimination from the service under the provisions of Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability).

11. The applicant was discharged on 29 June 1970. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-212, with Separation Program Number 28B (unfitness, frequent involvement in incidents of a discreditable nature with civil or military authorities). He was assigned Reenlistment Code 4. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 9 months and 12 days of active service this period, with 2 years, 2 months, and 28 days of prior active service.

12. Additionally, his DD Form 214 shows he was awarded or authorized the National Defense Service Medal, Vietnam Campaign Medal, Vietnam Service Medal, three Overseas Service Bars, and Marksman (Rifle) Badge.

13. The applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 25 June 2015, the Board voted to deny relief and determined that the overall merits of the case were insufficient as a basis for correction of the applicant's records.

14. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and the applicant's service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that 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 separated for unfitness. The Board noted the applicant's service in the Republic of Vietnam and based on a preponderance of the evidence, the Board concluded that an upgrade to under honorable conditions (General) was warranted.

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 amendment of the ABCMR's decision in Docket Number AR20140018305 on 25 June 2015. 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 29 June 1970 to show an under honorable conditions (General) characterization of service.

4/8/2025

X

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. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

2. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. Paragraph 1-9d provided that an honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel, or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 1-9e provided that a general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

4. Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), then in effect, provided the policy and procedures for administrative separation of enlisted personnel for unfitness and unsuitability. It provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay

just debts. This regulation also prescribed that an undesirable discharge was normally issued.

5. On 25 July 2018, 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) 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.

//NOTHING FOLLOWS//