

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 April 2025

DOCKET NUMBER: AR20240007372

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

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Third party letter from J. B. describing the pain the applicant has been in
- Putnam Radiology Group Letter outlining the applicant's medical issues

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 AR20170016075 on 24 July 2020.

2. The applicant states his discharge was given due to medical reasons not behavior. He complied with all requests while existing out of the Army. He had a clean Army record, and the discharge was solely given due to prejudice against his medical condition.

3. The applicant's service record is void of the separation packet for the Board to review; however, it does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty).

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

- a. He enlisted in the Regular Army on 22 July 1968 for 3 years.
- b. He received nonjudicial punishment on/for:
 - 4 December 1968, for failing to go at the prescribed time to his appointed place of duty

- 24 April 1969, for without authority, absent himself from his unit and did remain so absent until on or about 19 April 1969
- 8 May 1970, for failing to go at the time prescribed to his appointed place of duty

c. On 14 July 1970, he was discharged from active duty under the provisions of AR 635-200, chapter 10, in lieu of court-martial – for the good of the service, with a characterization of under conditions other than honorable. He completed 11 months and 15 days of active service with 373 days lost time from 22 March 1969 to 29 March 1970.

5. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

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.

7. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 14 July 1970 discharge characterized an under conditions other than honorable.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 22 July 1968 and was discharged 14 July 1970 under the provisions provided in AR 635-200, Personnel Management – Enlisted Personnel. His separation program number of 246 denotes "Discharge for the Good of the Service." He had 373 days lost under section 972 of 10 U.S.C.

d. Though a witness statement says he deployed to Vietnam, his Enlisted Qualification Record (DA Form 20) shows no service in Vietnam. It actually shows he went absent without leave after completing advanced individual training.

e. The only medical documentation submitted with the application in a lumbar MRI report from March 2024 showing the applicant has significant lumbar spine degenerative changes.

f. Neither the applicant's separation packet nor documentation addressing his voluntary separation was submitted with the case file and his periods of Service predate iPERMS.

g. JLV shows he has not received care at the VA and has no diagnosed medical conditions.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

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 applicant's contentions, the military record, medical review, and regulatory guidance were carefully considered. The majority of the Board concurred with the medical advisory officer who found the applicant had no medical conditions that would mitigate his misconduct. The Board found the applicant received three nonjudicial punishments in less than one year, and although there was a document attesting that the applicant served in Vietnam, the majority of the Board determined there was no records to show he served in Vietnam, in fact, they noted he went AWOL right after advanced individual training. Therefore, the majority of the Board members voted to deny his request. On the other hand, the minority Board member determined that the witness statement was sufficient evidence to show the applicant served in Vietnam and based upon his service during a time of war, voted to grant relief.

2. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

The Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:XXX	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:	:XXX	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 amendment of the ABCMR decision rendered in Docket Number AR20170016075 on 24 July 2020.

X //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. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. 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, it states:

a. Chapter 10 is applicable to members who had committed an offense or offenses for which the authorized punishment included a bad conduct or dishonorable discharge could submit a request for discharge for the good of the service. The request could be submitted at any time after the charges had been preferred. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service has generally met standards of acceptable conduct and performance of duty for Army personnel.

c. 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.

3. 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//