

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 January 2025

DOCKET NUMBER: AR20240007390

APPLICANT REQUESTS: reconsideration of his prior request for an 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)
- Bank Account Statement
- VA Form 21-526EZ (Application for Disability Compensation and Related Compensation Benefits), 22 February 2024

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 AR20130012855 on 28 March 2014.

2. The applicant states he is requesting an upgrade of his under other than honorable conditions discharge to honorable. He believes the record reflects an untrue statement.

3. The applicant provides:

a. A bank account statement for the period of 10 January 2024 to 11 February 2024 which includes deposits from the Social Security Administration.

b. A VA Form 21-526 EZ dated 22 February 2024, shows the applicant listed his disability as epilepsy beginning in 1974; and a broken back beginning in 1975.

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

a. He enlisted in the Regular Army on 7 February 1978.

b. Three DA Form 4187 (Personnel Action) changed the applicant's duty status as follows:

- 1 May 1978 – present for duty (PDY) to absent without leave (AWOL)
- 31 May 1978 – AWOL to dropped from rolls (DFR)
- 28 July 1978 – the applicant was apprehended by civil authorities and returned to military control

c. A DD Form 458 (Charge Sheet) shows court martial charges were preferred on the applicant on 11 August 1978 for one specification of being AWOL from on or about 1 May 1978 until on or about 22 July 1978.

d. On 14 August 1978, the applicant consulted with legal counsel and requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- he was making the request of his own free will
- maximum punishment
- he was guilty of at least one or more of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other conditions other than honorable
- he would be deprived of many or all Army benefits, he may be ineligible for many, or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a Veteran under both Federal and State law
- he must apply to the Army Discharge Review Board or the Army Board for the Correction of Military Records for a review of discharge, but there was no automatic upgrading
- he may expect to encounter substantial prejudice in civilian life
- he elected to submit a statement in support of his request

e. In conjunction with his request for discharge the applicant submitted statements in his own behalf. He stated in effect after he joined the Army, he found out how much he was not suited for the Army. He tried to get discharged but could not, so he decided to stick it out. His girlfriend called while he was in training and told him she was pregnant and wanted him to come home so they could get married, and this was his reason for going AWOL. He was not suited for the Army, and he would rather be working his factory job. He made a mistake when he joined the Army.

f. On 30 August 1978, the separation authority approved the applicant's request for discharge for the good of the service. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted grade.

g. On 28 September 1978, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 4 months, and 25 days of active service with 88 days of lost time. It also shows he was awarded or authorized the Marksman Marksmanship Qualification Badge with Rifle Bar (M-16).

5. On 27 March 2014, the ABCMR rendered a decision in Docket Number AR20130012855. The Board having been advised by legal counsel; the applicant voluntarily requested discharge for the good of the service/in lieu of trial by court-martial. All requirements of law and regulation were met, and the right of the applicant were fully protected throughout the separation processing. The Board determined the misconduct rendered his service unsatisfactory and he was not entitled to an honorable or general discharge; therefore, his request was denied.

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

7. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

8. 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 and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to the misconduct leading to the applicant's separation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	: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 correction of the records of the individual concerned.

**//SIGNED//**

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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), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. 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.

b. 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. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service, in lieu of court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

2. 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/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.

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 based on 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.

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//