

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 February 2025

DOCKET NUMBER: AR20240007986

APPLICANT REQUESTS: reconsideration of his previous request to upgrade his under other than honorable conditions characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 5 November 1980
- Self-authored statement, 27 February 2023 (previously considered)
- 3 X character reference letters (previously considered)

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 AR20230006628 on 25 January 2024.

2. The applicant states he is requesting an upgraded discharge due to receiving a court martial instead of an article 15 offense. He feels the discharge was too harsh for the incident. He had enlisted as a young man to continue his family's history of service to the country. He had a positive career, and he enjoyed the camaraderie. He got married and did not understand the demands of serving his country and maintaining a family life. He started to encounter negative issues. He was dealing with marital issues and then his father got sick. He returned home to deal with his father's health; however, being home took a toll on his mental capacity. It was difficult for him to function and be productive. He lost the three most important things in his life, his marriage, his father, and his career.

3. The applicant enlisted in the Regular Army on 1 August 1978 for 3 years. He completed training and was awarded military occupational specialty (MOS) 11B (Infantryman). The highest rank he attained was private/E-2.

a. On 2 January 1979, he departed his Fort Benning, GA training unit in an absent without leave (AWOL) status. However, he returned to military control on 9 January 1979.

b. Following completion of MOS training, he remained assigned to an infantry unit at Fort Benning, GA.

c. On 24 April 1979, he again departed his unit in an AWOL status. However, he returned to military control on 29 April 1979.

d. On 26 November 1979, the applicant was again reported in an AWOL status and on 26 December 1979, he was dropped from rolls (DFR) as a deserter. On 8 January 1980, surrendered to civilian authorities and on 9 January 1980, he returned to military control. Upon his return, he was read Article 15 charges on 10 January 1980.

e. On 11 January 1980, he was again reported AWOL, and was immediately dropped from the rolls as a deserter.

f. On 14 July 1980, the applicant was apprehended by civilian authorities for a civilian charge of reckless driving. He was confined to the county jail pending court appearance. On 16 July 1980, he appeared in court and was sentenced to 6 days in jail. On 22 July 1980 he completed his sentence and was returned to military control.

g. The Charge Sheet (DD Form 458) and request for voluntary discharge under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, in lieu of trial by court-martial, are not filed in his service record.

h. The applicant's DD Form 214 shows he was discharged on 5 November 1980, under the provisions of AR 635-200 Chapter 10, by reason of administrative discharge conduct triable by court martial. His character of service was under other than honorable conditions (Separation Code JGS and Reenlistment Codes 3/3B). He was credited with 1 year, 6 months, and 14 days of net active service, He had time lost from 2 to 9 January 1979, 24 to 29 April 1979, 6 to 19 November 1979, 26 November 1979 to 7 January 1980, and from 11 January 1980 to 21 July 1980.

i. There is no indication he petitioned the Army Discharge Review Board for review of his discharge processing within that board's 15-year statute of limitations.

4. The applicant previously provided and now provides the same three-character references, stating the following:

a. Letter, 22 February 2023, from U.S. Army Veteran WES, opines the applicant is well respected, a positive role model, professional, honest, team oriented, organized, competent and a caring person. He has made positive impacts on the local community, and he has convinced numerous friends/relatives to join the military or attend college.

b. Letter, 22 February 2023, from U.S. Air Force retired Veteran HLG, speaks of the applicant's integrity, honesty, and attention to detail in their involvements. The applicant is meticulous, competent, a caring person who helps anyone when needed, he is intelligent, professional, dependable, and a role model.

c. Letter, 11 March 2023, from Reverend Doctor KED, who opines that the applicant is a role model and a man of character, respect, and has trustworthiness in the community. He mentors others, is community oriented, organized and a caring person, who continues to make a positive impact. He was instrumental in establishing and promoting the local baseball team, with volunteering his time and efforts.

5. On 26 January 2024, the Board considered his request for an upgrade of his discharge and denied it.

a. Prior to adjudicating his case, the Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records, and VA Joint Legacy Viewer (JLV). Based on the available information, the agency behavioral health advisor determined that possible mitigation because of mental health could not be established because the specific facts and circumstances that led to his discharge are not available. There is insufficient evidence beyond self-report the applicant has been diagnosed with a service-connected mental health condition.

a. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's mental health claim and the review and conclusions of the medical advisor. The applicant provided letters of reference that the Board found insufficient in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding there being insufficient evidence to establish whether his misconduct was mitigated by a mental health condition. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

6. By regulation (AR 635-200), discharges under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, from the Soldier, to avoid a trial by court-martial. An under other than honorable conditions character of service is normally considered proper.

7. The Board should consider the applicant's argument and/or evidence 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
:X	:X	:X	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.

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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. 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.

b. 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.

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.

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