

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 February 2025

DOCKET NUMBER: AR20240008132

APPLICANT REQUESTS:

- Reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable
- Removal of all military records with the exception of entry documents
- Telephonic/video appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), effective 16 July 1968
- 4 DD Forms 2627 (Record of Proceedings under Article 15, UCMJ)
- Statement of Character
- 3 AE Forms 3087 (Report of Psychiatric Evaluation)
- Special Court-Martial Order Number 1
- Medical Officer's Statement
- Memorandum; Subject: Counseling Efforts on [Applicant]
- Statement of Counseling
- Separation Proceedings
- DD Form 214, effective 12 August 1969
- Department of Veterans Affairs (VA) Letter
- 2 DA Forms 20B
- Medical Records
- Handwritten Notes
- Chronological Dates of Service

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20230008272 on 10 April 2024.

2. The applicant states after being informed that his military records were burned in a fire, he received a partial military record from the VA Regional Office in Waco, Texas. He contests that the records he received belonged to someone else, and the records he did receive that had his name on them included several discrepancies. He additionally states that he wants to be cleared of his characterization of discharge based on the records he received not belonging to him. He states he requested an internal investigation from the Department of the Army but was informed that there were no records to review and an investigation would not be conducted. Soon after he received two DD Forms 214 in the mail and immediately realized they were incorrect. He claims his signatures are forged, there are grammatical errors, and his reenlistment date is incorrect. He feels that an appearance before the Board is necessary to explain his case.

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

a. He enlisted in the Regular Army on 16 May 1967. He was honorably discharged on 16 July 1968 for immediate reenlistment on 16 July 1968. The highest rank/grade he held was private first class/E-3.

b. He accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on four occasions:

- On or about 23 July 1968, for absenting himself from his appointed place of duty and did remain so absent until 24 July 1968. His punishment was forfeiture of \$20.00 pay for one month, 30 days extra duty, and 14 days restriction.
- On or about 22 August 1968, for breaking restriction; on or about 10 September 1968, for failing to go at the time prescribed to his appointed place of duty and disobeying a lawful order; and on or about 11 September 1968, for failing to go at the time prescribed to his appointed place of duty. His punishment was reduction to private/E-1, forfeiture of \$45.00 pay for two months, and 45 days extra duty and restriction.
- On or about 15 September 1968, for breaking restriction and resisting lawful apprehension; and on or about 25 September 1968, for breaking restriction and for failing to go at the time prescribed to his appointed place of duty. His punishment was 30 days correctional custody (20 days suspended for 45 days), 30 days restriction (20 days suspended for 45 days), and 30 days extra duty (20

days suspended for 45 days). Upon appeal the punishment of 30 days restriction with 20 days suspended for 45 days was set aside effective 18 October 1968.

- On 23 November 1968, for wrongfully appearing in an unclean uniform and failing to comply with an order. His punishment was 14 days extra duty and 14 days restriction.

c. Before a special court-martial, at Caserma Ederle, Vicenza, Italy, on 31 January 1969, the applicant pled guilty to and was found guilty of nineteen specifications of failing to go at the time prescribed to his appointed place of duty, between on or about 4 December 1968 to 4 January 1969, and three specifications of breaking restriction between on or about 11 December 1968 to 13 December 1968. His sentence consisted of confinement at hard labor for six months and forfeiture of \$25.00 pay per month for six months. The sentence was approved on 27 February 1969.

d. On 3 February 1969, 5 March 1969 and 20 March 1969, the applicant underwent two complete psychiatric evaluations and one medical examination as part of his consideration for discharge due to his misconduct. His psychiatric evaluations noted, he showed no signs of psychosis or depression; he had character and behavior disorders of the passive aggressive type and of the emotionally unstable type; he had poor rehabilitative potential; and was psychiatrically cleared for discharge.

e. On 16 April 1969, the applicant's commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation (AR) 635-212 (Personnel Separations-Discharge-Unfitness and Unsuitability), by reason of unfitness. The commander noted the applicant's willful disobedience of orders and his behavior of a discreditable nature with both military and civilian authorities.

f. The applicant was counseled on the basis for the contemplated separation action, its effects, and the rights available to him. He requested consideration and personal appearance before a board of officers. He acknowledged understanding he may expect to encounter substantial prejudice in civilian life in the event of a general discharge, additionally he may be ineligible for many or all benefits as a Veteran under both Federal and State laws as a result of a UOTHC discharge. He elected not to submit statements in his own behalf.

g. On 6 May 1969 and 8 May 1969, the applicant's immediate and intermediate commanders formally recommended the applicant's discharge from service under the provisions of AR 635-212, by reason of unfitness.

h. On 19 June 1969, the applicant was notified to appear before a board of officers on 7 July 1969 to determine whether he should be discharged because of unfitness before the expiration of his term of service.

i. On 2 July 1969, the applicant elected to waive consideration and personal appearance before a board of officers.

j. On an undisclosed date, the separation authority approved the recommended separation action and directed the issuance of an DD Form 258A (Undesirable Discharge Certificate), with separation program number (SPN) "28B."

k. The applicant was discharge accordingly on 12 August 1969, under the provisions of Army Regulation 635-212, by reason of unfitness, with an UOTHC characterization of service in the grade of E-1, with SPN 28B and reenlistment code "RE-3 & 3B." His DD Form 214 contains the following entries:

- He completed a total of 1 year, 11 months, and 18 days of net active service with 9 months and 11 days of foreign service during the period covered.
- Item 30 (Remarks) shows he had 99 days of lost time from 23 July 1968 thru 23 July 1968 and 1 February 1969 thru 9 May 1969.

l. There is no indication the applicant petitioned the Army Discharge Review Board for an upgrade of his discharge within that Boards 15-year Statute of limitations.

4. The applicant provides:

a. DD Form 214, effective 16 July 1968, in which he highlighted item 11d (Effective Date), item 17c (Date of Entry) that reads 16 May 1967, and item 32 (Signature of Person Being Transferred or Discharged) which appears to be signed with the applicant's full name, with the word "forgery" above the signature.

b. An illegible copy of a DD Form 2627 dated 25 July 1968, in which the applicant highlighted the date, signature of the accused in which he wrote "forgery" above, and he wrote "I was not here in 1968, I was at Ft. Bragg, NC."

c. DD Form 2627 dated 17 September 1968, in which the applicant highlighted the date and specifications, and wrote "I was at Ft. Bragg at this time." Additionally, on the rear side of the document, he indicates "forgery" above what appears to be a signature of his name.

d. DD Form 2627 dated 9 October 1968, in which the applicant highlighted the date and specifications, wrote "was not here at this time" and "forgery" above what appears to be a signature of his name.

e. An undated Statement of Character endorsed by the Acting Provost Sergeant which states the applicant "has been a difficult discipline problem since he was confined

in the Correctional Holding Detachment on 1 February 1969..." The applicant has highlighted the entire document and notes he "was not in the stockade in February."

f. Previously mentioned, AE Form 3087 dated 3 February 1969, in which the applicant highlighted the document and wrote "if he was in the stockade in February, he would not have been there," and "this is an out and out lie."

g. Previously mentioned, AE Form 3087 dated 20 March 1969, in which the applicant highlighted the document and wrote "this is an out and out lie," "I was not in the stockade until May," and "I only had 2 Article 15s."

h. A statement of counseling dated 9 April 1969 that indicates the applicant was counseled in regard to his continuous misconduct on 7 occasions between 19 October 1968 and 23 January 1969. The applicant highlighted the dates and wrote "I was not here at this time," and "this is a lie, I never received counseling by this person or any other."

i. The separation proceedings initiated against the applicant began on 16 April 1969, with a notification of separation. The copy the applicant provided is illegible.

j. An undated election of rights memorandum that is initialed and endorsed with the applicant's name and initials is highlighted by the applicant with notes that say "I do not know how this was done but I have never seen this paper before," and "forgery" below his signature.

k. On the chain of command recommendations, the applicant highlights the date 6 May 1969.

l. In the separation authority's memorandum, he approved the discharge of the applicant and directed the issuance of a DD Form 258a (Undesirable Discharge Certificate).

m. Memorandum; Subject: Notification to Appear Before a Board of Officers dated 19 June 1969 in which it gives notice to the applicant that a Board of Officers was appointed for 7 July 1969 to determine whether he should be discharge due to unfitness. The applicant wrote on the document "this never happened."

n. Memorandum; Subject: Discharge for Unfitness Under AR 635-212 dated 3 July 1969 states that prior to the board convening on 2 July 1968, [applicant] completed AESE Form 176, waiver of board action. The applicant wrote on the document "I never saw this form to sign it."

o. The previously mentioned DD Form 214, effective 12 August 1969, was highlighted by the applicant in items 8 (Place of Birth), 11d (Effective Date), 16c (Date of Entry), and 32 (Signature of Person being Transferred or Discharged). Above item 32 he also wrote “forgery.”

p. A letter from the VA dated 27 February 2013 states that they made a decision regarding his discharge from military service. The VA decided that his military service for the period of 16 May 1967 through 12 August 1969 is not honorable for VA purposes. The applicant highlighted the dates throughout the letter, along with the reference of his being mentioned as a Sergeant. Additionally, he wrote a note that states “I was never in Fort Carson and I only was an E-3. I am not a homosexual, mutiny and spying, or a felon.”

q. DA Form 20B (Insert Sheet to DA Form 20 – Record of Court-Martial Conviction) shows a synopsis of specifications against the applicant, in which he highlighted item 50 (Synopsis of Specifications, including Date of Offense) that states failure to repair on 18 occasions between 4 December 1968 and 4 January 1969, and breaking restriction from 11 – 13 December 1968. Additionally, he highlighted the dates in item 51 (Sentence as Approved, including Date Adjudged and Date Approved). He wrote on the document “failure to repair is catch phrase when you don’t have anything to report but you want to get someone in trouble,” and “if I was in the stockade Feb 1, why did it take 27 day[s] to approve.”

r. 35 pages of medical records in which he highlighted multiple dates without explanation and multiple notes available for the Board’s review.

s. Multiple handwritten notes on two envelopes that states “enlistment date 6 May 1967; reenlistment date 17 February 1969; discharge date 31 August 1969,” and “medical records not mine.” Additionally, another note from the applicant states “all of these documents my signatures are forged. There are 4 Article 15s I never got as well.”

t. A document titled “Actual Chronological Dates of my Service,” which he details from his enlistment until his discharge.

5. On 10 April 2024, during the processing of docket number AR20230008272, 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 the case are insufficient as a basis for correction of the records of the individual concerned.

6. The applicant selected Other Mental Health, Sexual Assault/Harassment, and Don’t Ask, Don’t Tell as issues/conditions related to his request.

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 Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the available service records and the applicant's petition, the Board found insufficient evidence of in-service mitigating factors to overcome the documented pattern of misconduct. Evidence shows the applicant accepted nonjudicial punishment on multiple occasions and was convicted by special court-martial for repeated failures to report and breaking restriction.

2. The Board determined the applicant was discharged for unfitness, supported by psychiatric evaluations, command recommendations, and administrative processing consistent with regulatory requirements. The Board recognized the applicant assertions of disputing the authenticity of several documents and claims forgery, however, he has not provided verifiable evidence to substantiate these claims. The Board noted that it is not an investigative body and that the burden of proof rests with the applicant. Despite the absence of some separation documents, the record contains sufficient evidence to support the characterization of service and the basis for discharge. The applicant's contentions regarding erroneous documentation are uncorroborated, and his request to remove all military records lacks legal or factual justification. Based on this, the Board determined that the evidence does not demonstrate the existence of a probable error or injustice and denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20230008272 on 10 April 2024.

X //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 (AR) 15-185 (ABCMR) states applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

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

a. 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 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. A general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

3. AR 635-212, in effect at the time, provided the policy, procedures, and guidance for eliminating enlisted personnel for unfitness and unsuitability. Action would be taken to separate an individual for unfitness when it was clearly established that despite attempts to rehabilitate or develop them further efforts were unlikely to succeed, rehabilitation was impracticable, or they were not amenable to rehabilitation measures. Individuals were subject to separation by reason of unfitness when one or more of the following conditions existed: 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. An undesirable discharge was normally considered appropriate. However, an honorable or general discharge may have been awarded if the individual being discharged had been awarded a personal decoration or if warranted by the particular circumstances in a given case.

4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences.

5. 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.

a. This guidance does not mandate relief but 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.

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//