

IN THE CASE OF [REDACTED]

BOARD DATE: 28 April 2025

DOCKET NUMBER: AR20240011844

APPLICANT REQUESTS: Reconsideration of his previous request for upgrade of his dishonorable discharge (DD) to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Three Support Letters (The complete letter is available for the Board's review in supporting documents)
 - [REDACTED] – states he shares the highest recommendation for the applicant and states he has outstanding character traits and remarkable integrity. He has strong morals and principles and goes out of his way to help others. He possesses tremendous determination and his commitment to excellence is inspiring
 - [REDACTED] - states he has known the applicant for more than 10 years and he is respectable; hardworking person. The applicant is always willing to help the elderly and children
 - [REDACTED] – states she has known the applicant for over 25 years and has found him to always be hardworking and a man of his word. He is reliable and consistently exhibits a high level of integrity in all endeavors. He is kind and compassionate and genuinely cares for others
- DD Form 293 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the date ending 4 June 1973

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 AR20090012842 on 21 January 2010.

2. The applicant states:

- he was drafted into the military as a young boy; he feels he wanted to be discharge but thinks he was wrongfully discharged

- he was one of eight children and could not focus because he was concerned for his mother and the rest of his family; he felt his mother was his main priority at the time
- he wanted out of the military and as a result ended up being rebellious, this was not done to harm others but done in an attempt to get home to his mother

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

- a. He was inducted into the Army of the United States on 30 April 1970
- b. He deployed to Republic of Vietnam from 30 June 1971 to 24 November 1971
- c. He received nonjudicial punishment on:
 - 13 January 1971, for on or about 11 January 1971, wrongfully use provoking words towards Specialist Five (SP5) [REDACTED] This in violation of Article 117, UCMJ; his punishment was forfeiture of \$50.00 per month for 1 month
 - 24 June 1971, for on or about 16 June 1971, absent himself from his unit until 23 June 1971. This is in violation of Article 86, UCMJ; his punishment was forfeiture of \$39.00 per month for 1 month

d. On 24 November 1971, at Camp Horn, Da Nang, Republic of Vietnam, the applicant was tried by a general court-martial (GCM) of:

- Charge I (Article 128) and its specification of unlawfully striking Specialist [REDACTED] in the head with a bottle
- Charge II (Article 134) and five specifications of intent to commit murder, commit an assault by detonating a concussion grenade in a room
- The court sentenced him to be dishonorably discharged (DD) from the Army, to forfeit all pay and allowances, to be confined at hard labor for fifteen years, and to be reduced to the grade of Private E-1

e. On 11 January 1972, the convening authority approved only so much of the sentence as provided for a dishonorable discharge, forfeiture of all pay and allowances, confinement at hard labor for 15 years, and a reduction to E-1.

f. The Record of Trial was forwarded to The Judge Advocate General of the Army for appellate review.

g. The decision of the U.S. Army Court of Military Review is not available. However, GCM Order Number 440, issued on 18 May 1973, shows the convening authority's action indicates that the findings of guilty of Charge 1 and its specification (assault) were affirmed and that only so much of the findings of guilty of Charge II and its five

specifications was affirmed as included the lesser included offense of aggravated assault with a dangerous weapon likely to produce death or grievous bodily harm in the manner, times, and places and upon the victims as alleged and that only so much of the sentence as provided for a dishonorable discharge, forfeiture of all pay and allowances, confinement at hard labor for 3 years and 6 months, and reduction to E-1 was affirmed. The convening authority ordered the dishonorable discharge to be executed.

h. The applicant was discharged with a dishonorable discharge on 4 June 1973. His DD Form 214 shows he was discharged in the rank/grade of private/E-1 in accordance with Army Regulation 635-200 (Active Duty Enlisted -Administrative Separations) paragraph 11-1, as a result of court-martial.

i. It also shows he completed 1 year, 6 months, and 18 days of active service; His DD Form 214 also shows:

- Item 15 (Reentry Code): 4
- Item 30 (Dates of Time Lost During this Period): 565 days of lost time due to absent without leave and confinement

4. In his previous request (AR20090012842) on 21 January 2010, after reviewing the application and all supporting documents, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned. The application submitted was denied by the ABCMR.

5. 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:

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, and regulatory guidance were carefully considered.

2. The Board carefully considered the applicant's request, supporting documents, his statement, the evidence in the records, the medical review, and published Department of Defense guidance for consideration of discharge upgrade requests based upon liberal consideration and/or clemency. The Boards determined, based on a preponderance of the evidence, the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	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 to amend decision of the ABCMR set forth in Docket Number AR20090012842, dated 21 January 2010.

5/6/2025

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 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 (Active Duty Enlisted – Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel and states:

a. 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 the acceptable conduct and performance of duty for Army personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. 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. Under Other Than Honorable Conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexuality, security reasons, or for the good of the service.

d. Dishonorable Discharge will be given a bad conduct discharge pursuant only to an approved sentence of a general court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing SJA.

3. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

4. 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//