

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 August 2023

DOCKET NUMBER: AR20230000611

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge to an under honorable conditions (general) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he tried to keep from harming his tank commander and platoon sergeant. He volunteered to go to Vietnam and was denied. He tried to change platoons or company and was denied so he left to keep from doing something he would regret later in life. When he turned himself in, they had a hard time finding his records. He has not been in any trouble since he got out and he obeys the law.
3. The applicant enlisted in the Regular Army on 29 June 1973 for 3 years. His military occupational specialty was 11E (Armor Crewman).
4. The applicant accepted nonjudicial punishment (NJP) on 19 March 1974 under Article 15 of the Uniform Code of Military Justice (UCMJ), for failing to go at the time prescribed to his appointed place of duty on or about 17 March 1974. His punishment consisted of forfeiture of \$50.00 for one month and extra duty.
5. He accepted NJP on 11 June 1974 under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty on or about 4 June 1974 on two occasions. His punishment consisted of forfeiture of \$84.00, reduction to private/E-2 (suspended) and extra duty.

6. The applicant was absent without leave (AWOL) on 24 September 1974 and dropped from the unit rolls as a deserter on 23 November 1974.
7. Before a special court martial 22 November 1974 at Fort Benning, GA, the applicant was found guilty of AWOL from on or about 24 September 1974 until on or about 23 October 1974. The court sentenced him to confinement at hard labor for two months, forfeiture of \$200.00 for two months and reduction to private/E-1.
8. While being transported to the confinement facility on 23 November 1974, the applicant escaped and was again reported as AWOL. He surrendered to civilian authorities on 11 August 1976 and was returned to the control of the military on the same date.
9. Court-martial charges were preferred against the applicant on 18 August 1976, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 23 November 1974 until on or about 11 August 1976.
10. The applicant consulted with legal counsel on 20 August 1976 and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him.
  - a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10, for the good of the service-in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.
  - b. He elected not to submit a statement in his own behalf.
11. The applicant's immediate commander recommended approval of the applicant's request for discharge, and further recommended the issuance of an undesirable discharge. The chain of command concurred.
12. There had been no change in his medical condition since his last separation examination.

13. The separation authority approved the applicant's request for discharge on 2 November 1976, in lieu of trial by court-martial. He directed that the applicant be reduced to the lowest enlisted grade and receive a DD Form 258A (Undesirable Discharge Certificate).

14. The applicant was discharged accordingly on 17 November 1976. His DD Form 214 (Report of Separation from Active Duty) does not show the authority and reason for his discharge. However, it does show he was issued a DD Form 258A and his service was characterized as UOTHC. He completed 1 year, 7 months and 2 days of net active service. He had 657 days of lost time.

15. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

16. The applicant petitioned the Army Discharge Review Board (ADRB) for upgrade of his discharge. On 8 October 1993, the ADRB determined he was properly and equitably discharged and denied his request for upgrade of his undesirable discharge.

17. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

#### BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 for correction of the records of the individual concerned.

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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 (USC), 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. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
  - a. 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.

b. 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.

c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

3. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NRs) on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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 on the basis of equity, injustice, or clemency grounds, Boards 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//