

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 August 2023

DOCKET NUMBER: AR20230001579

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

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

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 understands he can have his discharge upgraded.
3. The applicant enlisted in the Regular Army on 27 May 1971 for three years. He did not complete training and was not awarded a military occupational specialty.
4. A memorandum, issued by the U. S. Army Training Center, Fort Lewis, WA on 12 October 1971, shows the applicant was released by civilian authorities on 16 September 1971, following a motion to dismiss charges by the U. S. Attorney for the District of Oregon. The charges stemmed from a purported theft and had been filed under the Uniform Code of Military Justice (UCMJ), Summary Court, by his command on 12 October 1971.
5. Before a summary court-martial on 18 November 1971 at Fort Lewis, WA, the applicant was found guilty of being absent without leave (AWOL) from his Basic Combat Training Brigade on or about 11 August 1971 until on or about 22 September 1971. The court sentenced him to restriction and forfeiture of \$80.00 pay for one month. The sentence was approved on 19 November 1971.

6. A statement from the Commander, A Company, 1st Battalion, 5th Brigade, Fort Leonard Wood, MO, on 16 February 1972, shows the applicant did not arrive to his unit. His report not later than date was 23 January 1972.
7. Before a summary court-martial on 3 March 1972 at Fort Riley, KS, the applicant was found guilty of being AWOL from his Training Brigade on or about 24 January 1972 until on or about 4 February 1972, and from on or about 9 February 1972 until on or about 11 February 1972. The court sentenced him to confinement at hard labor for one month and forfeiture of \$192.00 per month for one month. The sentence was approved on 3 March 1972.
8. Summary Court Martial Order Number 60, dated 3 March 1972, shows the sentence was approved and ordered executed, but the execution of that portion adjudging confinement at hard labor for one month was suspended for three months, at which time, unless the suspension was sooner vacated, the suspended portion of the sentence would be remitted without further action.
9. Court-martial charges were preferred against the applicant on 15 May 1972, for violations of the UCMJ. The DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 19 March 1972 until on or about 23 March 1972, and on or about 30 March 1972 until on or about 13 April 1972, and from on or about 15 April 1972 until on or about 26 April 1972.
10. The applicant consulted with legal counsel on 17 May 1972 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 provisions 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 that he may expect to encounter substantial prejudice in civilian life. 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 to submit a statement in his own behalf; wherein, he stated he enlisted in the Army because he thought he liked it, he changed his mind, he does not. In basic he was having heck with the drill sergeant, and it's been that way all his life. He couldn't pass basic, so he went AWOL. All his life he has been the kind of guy who likes to break the law and he will do it again. He got his first Article 15 for AWOL and car theft

from an Army reservation and that didn't teach him, so he has been AWOL seven times after that, and he learned to hate the Army.

11. The applicant's immediate commander recommended approval of the applicant's request for discharge in lieu of trial by court-martial with his service characterized as UOTHC. The applicant's chain of command recommended approval.

12. An undated mental status evaluation, shows the applicant was mentally responsible and had the mental capacity to understand and participate in board proceedings.

13. The separation authority approved the applicant's request for discharge for the good of the service - in lieu of trial by court-martial on 1 June 1972. He directed that the applicant be furnished a DD Form 258A (Undesirable Discharge Certificate).

14. The applicant was discharged on 9 June 1972. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under the provisions of AR 635-200, with Separation Program Number 246 [for the good of the service - in lieu of court-martial]. His service was characterized as UOTHC. He completed 9 months and 22 days of net active service, with 84 days of lost time.

15. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

16. 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:

After reviewing the application, all supporting documents and the evidence found within the military record, the Board determined that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records and published DoD guidance for consideration of discharge upgrade requests. The Board considered the frequency and nature of the misconduct and the reason for separation. The Board found insufficient evidence of in-service mitigating factors to overcome the misconduct and weigh in favor of a clemency determination. Based on the preponderance of evidence available for review, the Board determined that 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 Board determined 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, 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//