

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 May 2024

DOCKET NUMBER: AR20230002977

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions to general, under honorable conditions.

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 from the Armed Forces of the United States)
- Personal Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 1 May 1980

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, in effect:

a. He joined the Army when he was 18 years old and wanted at least a 20-year career serving his country. He takes ownership of his bad decisions. He was scared, young, dumb, and stupid. He is in no way trying to minimize what he did, but he wants the opportunity to explain the reason behind his bad decision.

b. There were three privates in the barracks threatening to beat him to death with lead pipes from the bunks. The week before they made the threats, they had beaten a guy in the barracks with the pipes, and he saw firsthand that they were not playing. There was blood all over the place. When they threatened him, he was scared to death, so he ran. He should have gone to his sergeant, but he did not, and he knows it was the wrong decision.

c. He was charged with being absent without leave (AWOL) and issued an under other than honorable conditions discharge. Since being discharged, he has gotten his high school diploma, went to college, and got his Automotive Service Excellence certification. He has gotten married and raised five children, and they have all graduated from high school and have families of their own.

d. He has been diagnosed with severe Attention-Deficit/Hyperactivity Disorder (ADHD) and forgot to apply sooner to request an upgrade of his discharge.

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

a. The applicant enlisted in the Regular Army on 4 December 1978.

b. DA Forms 4187 (Personnel Action), shows the applicant's duty status changed on the following dates:

- Present for Duty (PDY) to AWOL – 22 May 1979
- AWOL to Dropped from Rolls (DFR) – 20 June 1979
- DFR to Attached – 29 February 1980

c. Court-martial charges were preferred against the applicant on 1 March 1980. His DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 22 May 1979 to 29 February 1980.

d. On 11 March 1980, after consulting with legal counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial, under Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10. The applicant acknowledged that he made the request of his own free will and was not coerced by any person. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charges against him or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He elected to submit a statement in his own behalf. He further understood, he could be deprived of many or all Army benefits, he could be ineligible for many, or all benefits administered by the Veteran's Administration, he could be deprived of his rights and benefits as a veteran under both Federal and State law and encounter substantial prejudice in civilian life because of an under other than honorable conditions discharge.

e. On 11 March 1980, the immediate commander recommended approval of the request for discharge in lieu of trial by court-martial, with characterization of service under other than honorable conditions. The intermediate commander agreed with the immediate commander's recommendation.

f. The separation authority approved the recommended discharge on 28 March 1980, directed the applicant be reduced to the lowest enlisted grade, and be issued an under other than honorable conditions discharge.

g. The applicant was discharged on 1 May 1980. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, in the rank/grade of private/E-1, and his service was characterized as under other than honorable conditions. He completed 7 months and 21 days of net active service during the covered period and had lost time from 22 May 1979 to 28 February 1980.

4. The applicant applied to the Army Discharge Review Board (ADRB) on 8 April 1994 and on 23 August 1996, the Board found that the applicant's discharge was proper and equitable.

5. The Board should consider the applicant's statement and overall record in accordance with the published equity, injustice, or clemency determination guidance.

6. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

#### 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 her characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence of mitigating factors to overcome the misconduct of being AWOL from May 1970 to February 1980. The Board applauds the applicant's post service accomplishments since his discharge. However, the applicant provided no character letters of support for the Board to weigh for clemency determination.

2. Evidence in the record show the applicant completed only 7 months and 21 days of net active service during the covered period. The Board found the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a general under honorable conditions discharge. Therefore, the Board denied relief.

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 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. Army Regulation (AR) 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 provided that a Soldier who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

3. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance

does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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//