

IN THE CASE OF: ██████████

BOARD DATE: 4 January 2024

DOCKET NUMBER: AR20230003698

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service to under honorable conditions (general) and a personal appearance before the Board.

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

Online Application with signature page

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, the accusations against him were untrue, and the investigation lacked integrity. The Article 32 hearing board recommended several of the charges against him be dismissed due to lack of evidence. Despite the accusations brought against him, he had an outstanding career.
3. The applicant enlisted in the Regular Army on 9 November 2010 for a 6-year period. The highest rank he attained was specialist/E-4.
4. Court-martial charges were preferred against him on 18 March 2015 for violations of the Uniform Code of Military Justice. The relevant DD Form 458 shows the applicant was charged with committing a sexual act upon Private First Class (PFC) ██████████ by causing bodily harm, committing a sexual act upon PFC ██████████ when she was incapable of consenting due to impairment by a drug, intoxicant, or other similar substance, and committing sexual contact upon PFC ██████████ by causing bodily harm, on or about 9 October 2014.
5. The applicant consulted with legal counsel on or about 17 April 2015.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, in lieu of trial by court-martial, under the provisions of Army Regulation 635-200 (Active Duty and Enlisted Administrative Separations), Chapter 10. 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 acknowledged making this request free of coercion. He further acknowledged understanding if his discharge request were approved, 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, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. He was advised he could submit any statements he desired in his behalf. He did not provide a statement.

6. The applicant's immediate and intermediate commanders recommended approval of the request for discharge in lieu of trial by court-martial, with a service characterization of UOTHC. The commanders further stated the victim supported the separation action, and it was in the best interest of all parties.

7. The separation authority approved the recommended discharge on 28 April 2015, and directed the applicant be reduced to the lowest enlisted grade, with the issuance of an UOTHC Discharge Certificate.

8. The applicant was discharged on 16 May 2015 under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his character of service was UOTHC. He was credited with 4 years, 6 months, and 8 days of net active service. He was authorized or awarded the following:

- Army Commendation Medal
- Army Achievement Medal
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Korea Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon (3rd award)

9. The Army Discharge Review Board reviewed the applicant's request for an upgrade of his UOTHC characterization of service to honorable on 11 August 2017. After careful consideration, the Board determined the applicant was properly and equitably discharged. His request for relief was denied.

10. Discharges under the provisions of Army Regulation 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC characterization of service is normally considered appropriate.

11. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. 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 the evidence, the Board determined 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 for correction of the records of the individual concerned.

3/20/2024

X [REDACTED]

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CHAIRPERSON  
[REDACTED]

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, 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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.
  - a. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
  
  - b. The ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.
  
3. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
  - a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an

honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. 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.

c. 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.

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/NR) 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 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//