

IN THE CASE OF: ██████████

BOARD DATE: 25 January 2024

DOCKET NUMBER: AR20230004169

APPLICANT REQUESTS: his under other than honorable conditions (UOTHC) discharge from the Army National Guard (ARNG) be upgraded to honorable.

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

- DD Form 149 (Application for Correction of Military Record)(Online)
- Army Review Boards Agency (ARBA) Letter
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Honorable Discharge Certificate
- NGB Form 22 (Report of Separation and Record of Service)(two)
- Notification Letter
- Character Letters (five)
- Satisfaction/Discharge of Mortgage Letter
- Certificates (seven)
- Photos (seven)
- ████████ ARNG Denial Letter

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:

a. He received a certificate stating that on 16 December 1986, he was given an honorable discharge. He filed an appeal with the ██████████ Adjutant General on 6 October 2022 to have his military discharge upgraded to an honorable discharge.

b. On 11 January 2023, he received a response that his request was denied. He was 20 years old at the time. He did not have the knowledge or know how at that time to seek any answers on why he was being discharged; he just let it go. The reason for his discharge was for misconduct based on unexcused absences. Included in this letter

were instructions on how to receive an honorable discharge. He does not believe this letter was ever sent to him, and there's no evidence that this letter was ever sent to him (not certified). No one in authority spoke to him about why he was being discharged, and he was never disciplined for anything at the time he was discharged. He received a certificate in 1983 stating that he was honorably discharged. At a later time, he received another document, NGB Form 22, on which the line for the reason was left blank with dash marks, telling him he was separated from the Army UOTHC.

c. As he has matured and gained more knowledge, he realizes this was wrong to be discharged and given no reason at the time. His copy of the NGB Form 22 does not have the reason and authority for discharge, there are dash marks, and it does not match a copy of the NGB Form 22 that has the reason and authority for discharge. He now sees this is a stain on his accomplishments in life. He would like his honorable discharge that he originally received to be reinstated. He included some of his accomplishments over the past 29 years.

3. The applicant's complete military records are not available for review; however, the available documents include the member 1 copy of his DD Form 214.

4. The applicant enlisted in the [REDACTED] ARNG ([REDACTED] ARNG) on 17 December 1980 for six years. His military occupational specialty was 13F (Fire Support Specialist).

5. The applicant entered active duty on 11 March 1981. He was released from active duty on 13 June 1981 and transferred to the Adjutant General, State [REDACTED]. His DD Form 214 shows he completed 3 months and 3 days of net active service. His characterization of service is not shown.

6. Orders 237-2, dated 18 September 1981, issued by the Department of Military Affairs, Lansing, shows the applicant was transferred to a new unit in Lansing, effective 1 October 1981. The commander recommended approval on 29 December 1981.

7. A Letter of Acceptance for Transfer, dated 10 December 1981, shows the applicant was accepted into a Military Police company, effective 1 January 1982.

8. A Letter of Unexcused Absence, dated 15 December 1981 shows the applicant was absent from the scheduled unit training assembly (UTA) or multiple unit training assembly (MUTA) during periods 1, 3, 4, 12 and 13 December 1981. He would have accrued 3 unexcused absences within a one-year period.

9. A Letter of Unexcused Absence, dated 28 May 1982, shows the applicant was absent from the scheduled UTA or MUTA during periods 1-5, 21, 22, 23 May 1982. He would have accrued 7 unexcused absences within a one-year period.

10. A Letter of Unexcused Absence, dated 3 July 1982 shows the applicant was absent from the scheduled UTA or MUTA during periods in July 1982. He would have accrued 8 unexcused absences within a one-year period.
11. A Letter of Unexcused Absence, dated 3 September 1982 shows the applicant was absent from the scheduled UTA or MUTA during periods 3-4 on 29 August 1982. He would have accrued 10 unexcused absences within a one-year period.
12. A Letter of Unexcused Absence, dated 23 September 1982 shows the applicant was absent from the scheduled UTA or MUTA during periods 3-4 on 19 September 1982. He would accrue 12 unexcused absences within a one-year period.
13. A Letter of Unexcused Absence, dated 16 October 1982, shows the applicant was charged with unexcused absence on 16 October 1982 because of unsatisfactory performance of assigned duties. He would have accrued 13 unexcused absences within a one-year period.
14. An Advice of Rights, dated 5 November 1982, shows the applicant's unit commander initiated separation proceedings under the provisions of Army Regulation (AR) 135-178 (Enlisted Administrative Separation), Chapter 7 (Unsatisfactory Participation of Statutorily Obligated Members), with an UOTHC discharge for the accumulation of nine or more unexcused absences in any one-year period.
15. The Advice of Counsel letter, dated 5 November 1982, regarding the applicant's election of rights and information regarding his discharge were not signed by the applicant.
16. A Notice of Unsatisfactory Participation letter, dated 5 November 1982, shows as the result of the action indicated, the applicant did not submit a request that he be excused from periods 3 and 4 on 17 October 1982, he was charged with 15 unexcused absences within a one-year period.
17. The Affidavit of Service by Mail shows that on 5 November 1982, the Assistant Adjutant of Headquarters Battalion, Field Artillery, mailed true copies of the Notification of Separation, Advice of Counsel, Individual Statement of Acknowledgement, Notice of Unsatisfactory Participation to the applicant.
18. The Notification of Separation Action, dated 5 November 1982, shows personal delivery was accomplished as indicated by the applicant's acknowledgement. The applicant acknowledged receipt of the notification and enclosures: Notification of Unsatisfactory Participation, Separation under the provisions of AR 135-178 and Advice of Counsel with Individual Statement on 29 November 1982.

19. The Request for Separation Board Action, dated 5 November 1982, shows a request for separation action was taken regarding the applicant due to a number of unexcused absences during the past 12 months: 15. The commander personally delivered the "Notice of Unsatisfactory Participation" letter and "Advise of Rights" from to the individual. He determined that there was no cogent or emergency reason which prevented the applicant from attending regularly scheduled training assemblies.

20. The Request for Separation Action shows charges of unsatisfactory participation against the applicant had been reviewed as outlined in AR 135-178 (Unsatisfactory Participation of Statutorily Obligated Members). Since the applicant did not elect to appear before the Board, the decision was made entirely upon the contents of the record to discharge the applicant by reason of misconduct.

21. A Department of Military Affairs letter, dated 12 January 1983, shows notification that the applicant had been discharged from the ■■■ ARNG for misconduct and transferred to the Individual Ready Reserve (IRR) effective 27 January 1983. The charge of misconduct was based upon nine or more unexcused absences within a twelve-month period.

22. The applicant was released and transferred to the U.S. Army Reserve (USAR) Control Group on 27 January 1983. His NGB Form 22 shows he was released under the provisions of National Guard Regulation (NGR) 600-200 (Personnel General-Enlisted Personnel Management), Paragraph 7-10r, Unsatisfactory Participation. His service was characterized as UOTHC. He completed 2 years, 1 month, and 10 days net service this period.

23. Orders D-12-091237, dated 10 December 1986, issued by the USAR Personnel Center, St. Louis, MO, honorably discharged the applicant from the IRR effective 16 December 1986.

24. NGR 600-200 provides in Appendix K, Statement of Understanding of Reserve Obligation and Responsibilities, ARNG Participation Requirements Certificate, that if an individual is charged with nine or more unexcused absences within a 1-year period, the individual will be declared an unsatisfactory participant and will be considered for separation from the ARNG and transferred to the IRR for the remainder of their military service obligation with a characterization of service normally as "UOTHC."

25. The applicant provides:

a. A copy of his DD Form 214, NGB Form 22 (two), notification letter, ■■■ ARNG letter and an honorable discharge certificate discussed above.

b. Character letters that attest to his years of dedicated service to the ██████████ Department of Transportation, his volunteerism, dependability, trustworthiness as a co teacher and being a team player.

c. Service certificates, college certificates and certificates of appreciation and completion and photographs.

d. Satisfaction/Discharge of Mortgage letter shows the applicant fully paid satisfied and discharged his mortgage.

26. On 30 September 2022, the ABCMR determined the applicant must appeal his UOTHC discharge to his state Adjutant General before applying to the ABCMR in accordance with NGR 600-200.

27. Additionally, the applicant provides a memorandum for record from the ██████ ARNG Joint Force Headquarters, dated 11 January 2023. The memorandum shows the applicant requested his characterization of separation be reviewed and changed for service in the ██████ ARNG for the period 17 December 1980 through 27 January 1983. He requested his ██████ previous character of service be upgraded from UOTHC. The Enlisted Branch Action Team (EBAT) reviewed his separation documents on 10 January 2023 to consider the previous separation action.

a. The applicant was discharged from the ██████ ARNG for misconduct. His discharge request was processed in accordance with applicable laws and regulations.

b. The EBAT found insufficient evidence to approve the applicant's request. The request for characterization upgrade is disapproved.

28. ARNG discharges, as documented on the NGB Form 22, are functions of the State under the legal authority of Title 32 and are not Federal actions. As such, they are primarily under the control of the State Adjutant General. The ABCMR may only recommend possible actions.

29. 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, supporting documents, 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 found the character letters and other materials he provided insufficient 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:

<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.

4/24/2024

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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, 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. NGR 600-200 provides in Appendix K, Statement of Understanding of Reserve Obligation and Responsibilities, ARNG Participation Requirements Certificate, that if an individual is charged with nine or more unexcused absences within a 1-year period, the individual will be declared an unsatisfactory participant and will be considered for separation from the ARNG and transferred to the IRR for the remainder of their military service obligation with a characterization of service normally as "under other than honorable conditions."

3. AR 135-91 (Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures) prescribed policies and procedures governing methods of fulfillment, satisfactory participation, and enforcement. Paragraph 4-11 states a Soldier fails to participate satisfactorily when they accrued, in any 1-year period, a total of 9 or more unexcused absences from scheduled unit training assemblies.

4. Army Regulation 135-178 sets forth the basic authority for the separation of enlisted Reserve Component personnel. The regulation then in effect, provided:

a. Paragraph 2-9a provides that an honorable characterization of service 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.

b. Paragraph 2-9b provides that a general (under honorable conditions) characterization of service is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

c. Paragraph 2-9c provides that service may be characterized as under other than honorable conditions when discharge is for misconduct, fraudulent entry, unsatisfactory participation, or security reasons.

d. Chapter 7, Section VII (Unsatisfactory Participation of Statutorily Obligated Members), states a Soldier is subject to discharge for unsatisfactory participation when it is determined that the Soldier is unqualified for further military service because the Soldier is an unsatisfactory participant. It applies to all non-prior service ARNG and USAR enlisted members who have not served 24 months' active duty and provide for transfer to the IRR. An UOTHC character of service is normally appropriate under this provision.

5. The Under Secretary of Defense (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//