



6. Court-martial charges were preferred against the applicant on 4 December 1978; specifically, he was charged with absenting himself from his unit without leave from on or about 3 October 1978 to on or about 8 November 1978.

7. On 18 December 1978, the applicant consulted with legal counsel and 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 discharge under other than honorable conditions if this request was approved, and of the procedures and rights available to him. Following this consultation, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separation-Enlisted Personnel), chapter 10, for the good of the service-in lieu of court-martial. He made the following acknowledgements in his request:

a. He acknowledged he was making this request of his own free will and had not been subjected to any coercion whatsoever by any person. He further acknowledged he understood the elements of the offense(s) charged and he was guilty of the charge(s) against him or of (a) lesser included offense(s) which also authorized the imposition of a bad conduct or dishonorable discharge.

b. He further acknowledged and understood that 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 Veterans 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 elected to provide a statement wherein he stated, he was requesting a general discharge so he could keep his benefits. He admitted he was wrong in going AWOL, but he did go AWOL for personal reasons. He was in a car wreck at home and was told to take it easy for a couple of days. He did not come back because his wife was pregnant and having trouble. He stayed home and worked with his father making money so he could get his wife some things. His wife was still pregnant, and he still needed to be home to help her and work with his father. Being in the Army caused a lot of trouble between he and his wife. He did not believe staying in the Army would help him, but he was requesting a general discharge based on his past service.

8. The applicant's immediate and intermediate commanders recommended approval of his request for discharge in lieu of trial by court-martial and further recommended an under other than honorable conditions discharge.

9. On 29 December 1978, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, Chapter 10 and ordered the issuance of

a discharge certificate Under Other Than Honorable conditions (DD Form 794A) and the applicant's reduction to private/E-1.

10. A Report of mental status evaluation, dated 8 January 1979, shows the applicant had the mental capacity to understand and participate in administrative proceedings deemed appropriate by his command.

11. The applicant was discharged on 19 January 1979, under AR 635-200, chapter 10, for the good of the service - in lieu of court-martial in the rank/grade of private (PV1)/E- 1, with a date of rank of 29 December 1978. His DD Form 214 (Report of Separation from Active Duty) shows his character of service was under other than honorable conditions. This form also shows he completed, 1 year, 2 months, and 16 days of net active service this period with lost time from 3 October 1978 to 7 November 1978. Additionally, he received a separation code of "JFS" and a reentry code of "3B."

12. Regulatory guidance provided a discharge under other than honorable conditions is normally considered appropriate for Soldier's discharged under the provisions of Army Regulation 635-200, chapter 10.

13. The Board should consider the applicant's petition and his service in accordance with the published equity, injustice, or clemency determination 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 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.

2/27/2024

X

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, 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 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, an UOTHC discharge was normally considered appropriate.

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Service 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//