

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 January 2024

DOCKET NUMBER: AR20230005463

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-authored letter
- Character reference letters (4)
- DD Form 214 (Report of Separation from Active Duty)

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 that:

a. He is not proud of the way he left the military, but at the time he felt he had no choice. It has taken; him years to reach out because he felt that he let himself and his country down. Being in the military for the short period of time that he was there, was the best part of his life.

b. His father left his family (mother and seven children) when he was 10 years old. His mother didn't speak English and she only had a second grade Italian education and as the eldest child he became her interpreter at the time. They lived on food stamps and public assistance. At 13 years old, along with his 12 year old brother, he became a newspaper boy and tried to help support his mother and younger siblings. That responsibility followed him into his teens and adulthood. He joined the military at 17 years old because he was in a high school that was tough, and he was continuously getting into altercations. A police officer took him under his wing and advised him to join the military.

c. He was part of a special unit. The pride he felt was incomparable until he had his children. While he was stationed at Fort Hood, TX, his younger brother called him and said his mother and his five siblings, were going to be evicted from their apartment. Having no one or no place to turn to and knowing that they were on the verge of being homeless, he panicked and did the only thing he could. He left without permission, went home, and got a job immediately. He fully intended to stay committed to the military because he wanted to have a career within the military. He began as a mechanic and hoped to advance in that field. Life got in the way of his dream. To this day, he regrets not having that option and leaving when he did.

3. On 9 December 1975, the applicant enlisted in the Regular Army, for 4 years. Upon completion of training, he was awarded military occupational specialty 63C (Truck Vehicle Mechanic).

4. On 15 August 1976, the applicant was reported as absent without leave (AWOL) and remained absent until he was apprehended by military authorities on 14 December 1976.

5. On 17 December 1976, court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL from on or about 15 August 1976, until on or about 13 December 1976.

6. On 17 December 1976, 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 UCMJ; the possible effects of an undesirable 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 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 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 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 declined to submit a statement in his own behalf.

7. On 26 December 1976, the applicant's commander recommended approval of the applicant's request for discharge, and further recommended the issuance of an undesirable discharge.
8. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 5 January 1977. He further directed the applicant's reduction to the lowest enlisted grade and the issuance of a DD Form 258A (Undesirable Discharge Certificate).
9. The applicant was discharged on 14 January 1977. His DD Form 214 confirms he was discharged in the lowest enlisted grade under the provisions of chapter 10 of AR 635-200 and his service was characterized as UOTHC. He was assigned Separation Program Designator Code JFS and Reentry Code 4. He completed 9 months and 7 days of net active service this period with 121 days of time lost.
10. 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 Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.
11. The applicant provides four character reference letters that collectively attest to his strong family bonds, honesty, trustworthiness, work ethic, and his high moral character. Several letters speak to his youth and the difficulties that he and his family had to overcome. These letters are provided in their entirety for the Board's review within the supporting documents.
12. The applicant petitioned the Army Discharge Review Board requesting upgrade of his UOTHC discharge. On 20 January 1983, the Board voted to deny relief and determined that he was properly discharged.
13. 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 found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

a. The applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After 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 and carry and under other than honorable conditions discharge. He willingly and in writing requested to be discharged in lieu of trial by court-martial. The Board found no error or injustice in his separation processing or character of service.

b. However, the Board also noted that the applicant acknowledged his poor decision at the time and has also provided 4 character reference letters that collectively attest to his strong family bonds, honesty, trustworthiness, work ethic, and his high moral character. Several letters speak to his youth and the difficulties that he and his family had to overcome. The Board determined that his service did not rise to the level required for an honorable discharge (given his 121 days of lost time), however, an under honorable conditions (general) characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further determined no change to the reason for separation and/or associated separation and RE codes.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

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: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 for the period ending 14 January 1977 showing:

- Character of Service: General, Under Honorable Conditions
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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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 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. 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//