

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 December 2023

DOCKET NUMBER: AR20230005563

APPLICANT REQUESTS: An Appearance before the Board via video/telephone, specifically to have his under other than honorable conditions (UOTHC) be upgraded.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record),

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 he is requesting an upgrade in order to obtain medical care from the Department of Veterans Affairs (VA). He was told his discharge would be under honorable conditions (general) and only later found out it wasn't.
3. The applicant enlisted in the Regular Army 19 April 1999 for 3 years. He completed training and was awarded the military occupational specialty 92Y (Unit Supply Specialist). The highest grade he held E-2.
4. On 5 January 2000, the applicant's unit reported him AWOL. He voluntarily surrendered military authorities and military control on 12 February 2000.
5. Court-martial charges were preferred against the applicant on 22 February 2000 for violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with being absent without leave (AWOL) from on or about 5 January 2000, until on or about 13 February 2000.
6. The applicant consulted with legal counsel on 22 February 2000 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 under other than honorable conditions discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision 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 Department of Veterans Affairs (VA), and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

b. He was advised he could submit any statements he desired in his own behalf; however, the applicant waived this right.

7. The applicant's immediate commander recommended approval of the applicant's request for discharge in lieu of trial by court-martial, and that he receive a UOTHC discharge.

8. The separation authority approved the applicant's request for discharge on 11 April 2001 under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial, and directed that the applicant be reduced to the lowest enlisted grade and that he receive a UOTHC.

9. The applicant was discharged on 8 May 2001 in the grade of E-1. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial with a UOTHC characterization of service, a Separation Code of KFS, and a Reentry Code of 4. He had 1 year, 10 months, and 3 days of net active service, with 39 days of lost time. He had 441 days of excess leave from 23 February 2000 to 8 May 2001. He was awarded the Army Service Ribbon.

10. The issuance of a discharge under the provisions of Army Regulation 635-200, Chapter 10, required the applicant to have voluntarily and willingly requested, in writing discharge in lieu of trial by court-martial. It is presumed that all requirements of law and regulation were met and the rights of the applicant were fully protected throughout the separation process.

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

BOARD DISCUSSION:

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 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 noted that the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial and his application reveals insufficient evidence of post-service achievements or letters of reference in support of a clemency determination. After due consideration of the request, and, in the absence of post-service achievements or letters of reference to weigh in support of a clemency determination, 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 Board determined 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at that 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. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

c. Chapter 10 of that regulation provided, in pertinent part, 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 under other than honorable conditions discharge was normally considered appropriate

4. The Under Secretary of Defense for Personnel and Readiness issued guidance to DRBs and BCM/NR 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//