

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 January 2024

DOCKET NUMBER: AR20230005653

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) characterization of service.

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

- DD Form 293 (Application for the Review of Discharge)
- self-authored statement, undated
- Certificate of Excellence, 26 April 2010
- Certificate of Recognition, 6 May 2017
- Certificates of Appreciation, 21 January 2020, and 16 December 2021

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20160007710 on 22 May 2018.

2. The applicant states he knows what he did was wrong; he admits he messed up and regrets it. Since his discharge from the Army, he has been a loyal and upstanding American. He has received outstanding professional certificates of recognition, excellence, and appreciation, from his employer for this work and volunteer work in his community. He believes he has become a better person and deserves a chance for relief. He is 65 years old and is fighting liver problems. He would like his grandchildren to be able to see his discharge upgrade happen.

3. The applicant enlisted in the New Jersey Army National Guard on 24 September 1975, for 6 years.

4. His DD Form 214 (Report of Separation from Active Duty) for the period ending 25 January 1976, shows he was honorably released from active duty after completing his advance individual training and being awarded the military occupational specialty 11B (Infantryman). He completed 5 months and 1 day of net active service during the period covered.

5. The applicant enlisted in the Puerto Rico Army National Guard on 25 October 1978, for 3 years. The highest rank/grade he held was private/E-2.
6. Orders 72-36, show he was ordered to active duty to complete an active-duty commitment of 18 months and 29 days with a report date of 9 June 1979.
7. Three DA Forms 4187 (Personnel Actions) show, effective 9 June 1979, his unit reported his duty status changed from in-transit to assigned not joined and then to absent without leave (AWOL). On 8 July 1979, he was dropped from the unit rolls.
8. On 21 August 1979, court-martial charges were preferred against the applicant. The DD Form 458 (Charge Sheet) shows he was charged with one specification of being AWOL from on or about 9 June 1979 and did remain absent until on or about a date still to be determined at the time.
9. On 5 September 1979, he accepted non-judicial punishment (NJP) under Article 15, of the Uniform Code of Military Justice (UCMJ), for on or about 27 August 1979, failure to obey a lawful order from his superior noncommissioned officer. His punishment was forfeiture of \$109.00 pay, restriction, and extra duty for 14 days.
10. On 7 November 1979, he accepted NJP under Article 15, of the UCMJ, for on or about 18 October 1979, absenting himself from his unit until on or about 18 October 1979. His punishment was reduction to private/E-1, forfeiture of \$224.00 pay per month for two months, restriction, and extra duty for 30 days.
11. On 6 December 1979, court-martial charges were preferred against the applicant. The DD Form 458 (Charge Sheet) shows he was charged with:
 - a. One charge and two specifications of on or about 16 November 1979, wrongfully having in his possession some amount of marijuana, and breaking restriction on or about 30 November 1979.
 - b. One charge and seven specifications of on or about 30 November 1979 to 3 December 1979, failure to go at the time prescribed to his appointed place of duty.
 - c. On or about 1 December 1979, failure to obey a lawful order from his superior noncommissioned officer.
12. On 10 December 1979, the applicant underwent a complete mental status evaluation as part of his consideration for discharge due to his misconduct. His mental status evaluation noted, he met the retention standards, demonstrated no mental disease or defect, and had the mental capacity to understand and participate in board / court-martial proceedings.

13. The applicant consulted with legal counsel on an undisclosed date 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 a UOTHC 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 (AR) 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 elected not to submit a statement in his own behalf.

14. On 10 December 1979 and 11 December 1979, the immediate, intermediate, and senior intermediate commanders recommended approval of the applicant's request for discharge and the issuance of a discharge UOTHC.

15. On 13 December 1979, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, and ordered the issuance of an UOTHC discharge.

16. The applicant was discharged accordingly on 17 December 1979, under the provisions of AR 635-200, Chapter 10, for the good of the service - in lieu of trial by court-martial, with an UOTHC characterization of service in the grade of E-1. He received a Separation Code of "JFS" and a reenlistment code "4." His DD Form 214 contains the following entries:

a. He completed 6 months and 6 days of net active service during the period covered.

b. Block 29 (Dates of Time Lost During this Period) the entry "791201 – 791203"

17. The applicant provides various certificates of excellence, recognition, and appreciation in support of his request highlighting his outstanding work performance at his place of employment and invaluable contributions as a volunteer in his community.

18. The ABCMR considered the applicant's request for upgrade of UOTHC discharge on 22 May 2018. After reviewing the application and all supporting documents, the

Board determined relief was not warranted. The Board found the evidence presented did not demonstrate the existence of a probable error or injustice as a basis for correction of the applicant's records.

19. Regulatory guidance in effect at the time provided discharges under the provision of AR 635-200, Chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

20. The Board should consider the applicant's argument and evidence, along with the overall record, 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 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 and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with commission of an offense 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 an under other than honorable conditions discharge. The applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that 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 to amend the decision of the ABCMR set forth in Docket Number AR20160007710 on 22 May 2018.

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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. Army Regulation 635-200, in effect at the time, set forth the primary authority for separating enlisted personnel.

a. Chapter 10 states in part, a member who has committed an offense or offenses, the punishment for any of which, under the Uniform Code of Military Justice (UCMJ) and the Manual for Court-Martial, include bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. In addition, the request for discharge may be submitted at any stage in the processing of the charges until the court-martial convening authority's final action on the case. Commanders will also ensure that a member will not be coerced into submitting a request for discharge in lieu

of trial by court-martial. The member will be given a reasonable time (not less than 72 hours) to consult with a consulting counsel and to consider the wisdom of submitting such a request for discharge.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. An under other than honorable discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and in lieu of trial by court-martial.

2. 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. This guidance does not mandate relief but 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. 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//