

IN THE CASE OF: ██████████

BOARD DATE: 11 January 2024

DOCKET NUMBER: AR20230006247

APPLICANT REQUESTS: his under other than honorable conditions (UOTHC) discharge be upgraded to either under honorable conditions (general) or honorable.

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

- DD Form 149 (Application for Correction of Military Record) (duplicate)
- Self-Authored Statement
- Service Documents
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Privacy Act Release Form (PARF)
- Email

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 would like to have more benefits. He is trying to get Department of Veterans Affairs loans, a military funeral, etc. He served almost four years of service. He missed his flight back to Germany and the next thing he knew he was discharged. In 1982 he was in a situation that involved helping his girlfriend survive. He helped her get on her feet and he missed his flight back to Germany, which caused him to become absent without leave (AWOL). He had an excess of 200 days AWOL. He was very young then and frightened of the repercussions of missing the flight. He takes full responsibility for his actions and realized that he had made a grave mistake. He did serve 3 years and 11 months. The transgression transpired in the final month, and he received an UOTHC discharge.

3. The applicant enlisted in the Regular Army on 13 November 1978 for four years. His military occupational specialty was 19E (Armor Crewman).

4. He was AWOL on 12 June 1979 and present for duty (PDY) on 6 July 1979.

5. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 10 July 1979 for being AWOL from on or about 12 June 1979 until on or about 6 July 1979. His punishment consisted of reduction to private/E-1 and forfeiture of \$97 pay for one month.

6. The applicant was AWOL on 1 August 1979 and PDY on 6 August 1979. He surrendered to his unit.

7. The applicant accepted NJP under Article 15 of the UCMJ on 9 August 1979 for being AWOL from on or about 1 August 1979 until on or about 6 August 1979. His punishment consisted of forfeiture of \$100.00 pay for one-month, extra duty, and restriction.

8. The applicant was AWOL on 27 August 1979 and PDY on 28 August 1979. He surrendered to his unit.

9. He accepted NJP under Article 15 of the UCMJ on:

- 27 September 1979, for being AWOL from on or about 27 August 1979 until on or about 28 August 1979; his punishment consisted of reduction to E-1, extra duty, and forfeiture of \$209.00 pay (set aside on 7 November 1979)
- 2 January 1980, for wrongfully having in his possession some quantity of marijuana on or about 5 December 1979; his punishment consisted of reduction to E-1, forfeiture of \$104.00, extra duty and restriction (effective 7 April 1980)

10. The applicant was AWOL on 31 December 1982, dropped from the rolls on 29 January 1982, and PDY on 13 September 1982. He surrendered to military authorities at Fort Knox, KY on 13 September 1982.

11. Court-martial charges were preferred against the applicant on 14 September 1982 for violations of the UCMJ. His DA Form 458 (Charge Sheet) shows he was charged with AWOL from on or about 31 December 1981 until on or about 13 September 1982.

12. The applicant consulted with legal counsel on 16 September 1982 and was advised of the basis for the contemplated trial by court-martial for an offense punishable by a bad conduct discharge or a dishonorable discharge, the maximum permissible punishment authorized under the UCMJ, the possible effects of a request for discharge, and of the procedures and rights available to him.

a. Subsequent to consultation with legal counsel, he requested discharge under the provisions of Army Regulation 635-200 (AR) (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 indicated he was making the request of his own free will and

he had not been subjected to any coercion whatsoever by any person. He understood by requesting discharge he was admitting guilt to the charges against him or of a lesser included offense that also authorized the imposition of a bad conduct discharge or a dishonorable discharge.

b. He did not desire a separation physical examination. He acknowledged he understood if his discharge request was approved, he could be deprived of many or all Army benefits and he could be ineligible for many, or all benefits administered by the Veterans Administration; he acknowledged he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. He did not elect to submit statements in his own behalf.

13. The applicant's immediate commander recommended and noted the applicant's conduct had rendered him triable by court martial. Based on his previous record, punishment could be expected to have minimal rehabilitative effect. He believed a discharge at this time to be in the best interest of all concerned. There did not appear to be any reasonable grounds to believe that he is, or was, at the time of his misconduct, mentally defective, deranged, or abnormal and recommended an UOTHC discharge. The applicant's chain of command recommended approval.

14. The separation authority approved the applicant's request for discharge on 5 October 1982, and directed the applicant be reduced to the lowest enlisted grade and that his character of service be UOTHC.

15. The applicant was discharged on 26 October 1982. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 10, for administrative discharge conduct triable by court martial. He was assigned Separation Code JFS and Reenlistment Code 3B, 3C, and 3. His service was characterized as UOTHC. He completed 3 years, 2 months, and 2 days of net active service. He lost time from 12 June 1979 to 5 July 1979, 27 August 1979 to 27 August 1979, 1 August 1979 to 5 August 1979 and 31 December 1981 to 12 September 1982.

16. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

17. On 27 January 1996, the Army Discharge Review Board determined that the applicant was properly and equitably discharge and denied his request for a change in the character and/or reason of his discharge.

18. 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 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.

4/1/2024


 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. AR 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.

//NOTHING FOLLOWS//