

IN THE CASE OF: ██████████

BOARD DATE: 3 January 2024

DOCKET NUMBER: AR20230006394

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

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 was discharged over 40 years ago. His discharge should be upgraded based upon the facts that since then he has been a model citizen, raised a family, and contributed positively to society. In 2014, the Department of Veterans Affairs advised him that they had taken care of upgrading his discharge, but they did not. This was the first time that he had an issue from anyone about the characterization of service he received upon being discharged. He had no disciplinary actions prior to or after his discharge.
3. The applicant enlisted in the Regular Army on 7 July 1981. His complete service record, to include a separation packet containing the specific facts and circumstances surrounding his discharge processing is not available for the Board to review. Therefore, this case is being considered based upon the available record documents.
4. A U.S. Marine Corps (USMC), 1st Marine Division (Reinforcing), Fleet Marine Force, Camp Pendleton, CA, memorandum, dated 3 March 1978, and a DD Form 214 (MC) (Report of Separation from Active Duty), show the applicant was honorably discharge from the USMC on 17 March 1978, by reason of Unsuitability – Apathy, Defective Attitude or Inability to Expand Effort Constructively. He was credited with 2 years and 8 months of net active service this period.

5. His Army DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), by administrative discharge for conduct triable by court-martial on 26 August 1982 in the rank/grade of private/E-1. His service was characterized as UOTHC, his separation program designator code was "JFS", with reenlistment code "4." He was credited with completion of 2 months and 13 days of net active service. He had lost time from 10 August 1981 to 16 July 1982. He was on excess leave from 11 August 1982 to 26 August 1982.

6. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court martial. In doing so, he would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

7. 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:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records, the Board noted, the applicant provided insufficient evidence of post-service achievements or character letters of support that attest to his honorable conduct that might have mitigated the discharge characterization. The Board found insufficient evidence of in-service mitigating factors for the misconduct to weigh a clemency determination.

2. This board is not an investigative body. The Board determined despite the absence of the applicant's separation records, they agreed the burden of proof rest on the applicant, however, he did not provide any supporting documentation and his service record has insufficient evidence to support the applicant contentions of a discharge upgrade. Further, the Board determined the applicant has not demonstrated based on the available evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to an honorable discharge. Therefore, the Board denied relief.

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.

1/10/2024

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CHAIRPERSON

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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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-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 regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an

error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing.

3. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

b. 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.

c. 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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs 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-

marital; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

//NOTHING FOLLOWS//