

IN THE CASE OF: ██████████

BOARD DATE: 18 January 2024

DOCKET NUMBER: AR20230006428

APPLICANT REQUESTS: his under other than honorable conditions (UOTHC) discharge 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 (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 when he enlisted he was 20 years old, and he had a wife and a newborn baby. While he was in basic training, he received a "Dear John" letter from his wife. After finishing basic training, he went to ██████████ for additional training. During the training he was granted convalescent leave to recover from an illness and this is when he made the decision to go home to try to fix the situation with his wife. At that point, he did not make it back to his assigned duty location because of the situation back at home.
3. The applicant enlisted in the Regular Army on 25 February 1981 for four years. His military occupational specialty was 11B (Infantryman).
4. He served in ██████████ from 20 June 1981 through 4 September 1981.
5. The applicant was absent without leave (AWOL) on 5 September 1981. He was dropped from the rolls (DFR) and present for duty (PDY) on 14 October 1981. He was apprehended by civilian authorities and returned to military control. The applicant was DFR again on 10 November 1981.
6. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ) on 13 November 1981. His DA Form 458

(Charge Sheet) shows he was charged with AWOL from on or about 5 September 1981 until on or about 14 October 1981 and on or about 10 November 1981. An updated DA Form 458 shows he remained absent until on or about 21 November 1981.

7. The applicant was PDY on 21 November 1981. He surrendered to military authorities. On 16 November 1981, he was arrested and booked, and transported to military authorities.

8. The applicant was DFR on 4 January 1982 and PDY on 5 January 1982. He surrendered to military authorities.

9. Court-martial charges were preferred against the applicant for violations of the UCMJ on 5 January 1982. His DA Form 458 shows he was charged with AWOL from on or before 5 September 1981 until on or about 14 October 1981 and on or about 4 January 1982 and did remain so absent.

10. The applicant consulted with legal counsel on 28 January 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 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.

11. The applicant's separation packet and separation approval memorandum are not available for review.

12. The applicant was discharged on 14 May 1982. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions

of AR 635-200, Chapter 10, by reason of administrative discharge conduct triable by court martial. His service was characterized as UOTHC. He completed 1 year and 29 days of net active service. He had three periods of lost time.

13. 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.

14. 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, 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.

4/15/2024

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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, USC, 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/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-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//