

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 January 2023

DOCKET NUMBER: AR20230006453

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to honorable. Additionally, he requests an appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record), 20 February 2023
- DD Form 149, 18 May 2023
- DD Form 256A (Honorable Discharge Certificate), 7 January 1982
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 26 November 1984

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, in effect, he received an honorable discharge before the "mishap", and he truly never understood the charge. He was told he could go to prison, and he was afraid. He is truly dedicated to his country.
3. The applicant enlisted in the Regular Army on 2 July 1979 for a 3-year period. He was honorably discharged on 7 January 1982. He reenlisted on 8 January 1982, for a 6-year period. The highest rank he attained was staff sergeant/E-6.
4. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 27 June 1984, for (1) failure to obey a lawful order by consuming more than three beers at the Warrior Lounge and (2) for wrongfully urinating on the bunk and sleeping bag of another Soldier, on or about 19 June 1984. His punishment consisted of forfeiture of \$221.00 per month for one month, 14 days of extra duty, and 14 days of restriction.

5. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) is not available for review. However, a DA Form 2496 (Disposition Form) shows the applicant was charged with committing sodomy on or about 15 September 1984 and disrespect towards a superior noncommissioned officer on or about 17 September 1984.

6. The applicant consulted with legal counsel.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. 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. 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 VA, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. He was advised he could submit any statements he desired in his behalf. He elected not to submit a statement.

7. On 8 November 1984, the applicant's immediate and intermediate commanders recommended approval of the applicant's request for discharge for the good of the service, further recommending the applicant be discharged with a UOTHC characterization of service.

8. On 13 November 1984, the Staff Judge Advocate recommended approval of the applicant's request for discharge for the good of the service, that he be discharged with a UOTHC characterization of service, and that the charges against him be dismissed.

9. On that same date, the separation authority approved the applicant's request for discharge for the good of the service and directed the applicant's reduction to the lowest enlisted grade and the issuance of a DD Form 794A (UOTHC Discharge Certificate).

10. Accordingly, the applicant was discharged on 26 November 1984, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service - in lieu of court-martial), in the rank/grade of private/E-1. His DD Form 214 confirms his service was characterized as UOTHC, with separation code "KFS" and reenlistment code "RE-3, 3C". He was credited with 5 years, 4 months, and 25 days of net active service. He was awarded or authorized the following:

- Army Service Ribbon
- Overseas Service Ribbon
- Army Achievement Medal
- Expert Infantryman Badge
- Army Good Conduct Medal
- Expert Marksmanship Qualification Badge with Rifle bar (M-16)
- Expert Marksmanship Qualification Badge with Grenade bar

11. Administrative separations under the provisions of Army Regulation 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

12. In reaching its determination, the Board should consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was partially 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.

a. The evidence shows 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 and under other than honorable conditions discharge. He willingly and in writing requested to be discharged in lieu of trial by court-martial. The Board found no error or injustice in his separation processing or character of service. The applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. However, given the applicant's length of service and the time that elapsed since his discharge, the Board determined that his service did not rise to the level required for an honorable discharge; however, an under honorable conditions (general) characterization of service is appropriate under published DoD guidance for liberal consideration of discharge

upgrade requests. The Board further determined no change to the reason for separation and/or associated separation and RE codes.

b. The Board did note however that the applicant’s service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

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:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant’s reissuing the applicant a DD Form 214 for the period ending 26 November 1984 showing:

- Character of Service: General, Under Honorable Conditions
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change
- Remarks: Add: “Member Completed First Full Term of Service” and “Continuous Honorable Service 19790702 Until 19820701”

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the characterization of his discharge to honorable.

[REDACTED]

[REDACTED]

[REDACTED]

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), paragraph 2-11 states applicants do not have the right to a hearing before the ABCMR. The Director of the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-5 (Personnel Separations), 15 August 1979, did not provide for an additional entry for continuous honorable active service, when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable. However, an interim change, published on 2 October 1989 does provide for such an entry.

4. Army Regulation 635-200, in effect at the time, provided guidance for the administrative separation of enlisted personnel:

a. Chapter 10 of this regulation provided a member who has committed an offense or offenses, the punishment for which, under the UCMJ and the Manual for Courts-Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the Service. The discharge request may be submitted after court-martial charges are preferred against the member, or, until final action on the case

by the court-martial convening authority. A member who is under a suspended sentence of a punitive discharge may also submit a request for discharge for the good of the Service. An UOTHC discharge certificate normally is appropriate for a member who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.

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.

5. 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 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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//