

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 January 2024

DOCKET NUMBER: AR20230006496

APPLICANT REQUESTS:

- an upgrade of his under other than honorable condition (UOTHC) characterization of service
- a personal appearance hearing before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Oregon Sheet Metal Works retirement benefits summary, 2 January 2015
- Letter of retirement and pension check payments, 31 May 2018
- Internal Revenue Service Form 1098 (Mortgage Interest Statement), 2022
- Federal and State tax returns, 2022
- Proof of Insurance Policies for Home, Auto, and Boat, 1 November 2022 to 1 November 2023
- Transunion credit score report, 12 February 2023
- Life Insurance Certificate, undated

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 that on the night of the incident, which led to his discharge, he was in his room when three black guys he did not know came into his room and asked him to help them steal his roommates' stereo. He knew it was wrong, but he feared retaliation if he refused. He helped the guys get the stereo over a fence when the military police showed up and arrested him. He did not share the details of the incident with anyone except for his attorney for fear of retaliation. He was willing to accept a discharge UOTHC instead of being a snitch because he feared repercussions. After his discharge from the Army, he became a journeyman sheet metal worker, started his own business, and has been a respectable and responsible citizen with no legal troubles. He

asks the board to grant him relief due to his circumstances, age, and maturity level at the time.

3. The applicant enlisted in the Regular Army on 21 December 1973, for 2 years. The highest rank/grade he held was private/E-2.

4. On 14 April and 16 April 1975, the applicant completed a medical examination and underwent a complete mental status evaluation as part of his consideration for discharge due to his misconduct. His mental status evaluation noted, he met retention standards, was mentally responsible, and had the mental capacity to understand and participate in board proceedings.

5. A DA Form 2166-4 (Enlisted Efficiency Report), dated 16 April 1975, shows the applicant received below average rating values in adaptability, attitude, initiative, and leadership and average rating values in responsibility and duty performance. His reviewer gave him a advancement potential rating value of 8 (Deny enlisted member continued active duty) and noted, the applicant did not perform up to the standards set in his unit. His attitude is far below his peers and his duty performance is such that he should not be on active duty.

6. The complete facts and circumstances surrounding his discharge are not available for review. However, his record contains a duly constituted DD Form 214 that shows the following:

a. On 28 April 1975, the applicant was discharged under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), 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 program designator Code of "KFS" and a reenlistment code "3."

b. He completed 1 year, 4 months, and 8 days of net active service with 8 months, and 13 days of foreign service during the period covered.

c. Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows:

- National Defense Service Medal
- Presidential Unit Citation
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)

7. The applicant provides various retirement, mortgage, tax, insurance and credit score documentation in support of his request to show he is a respectable and responsible citizen.

8. There is no indication the applicant petitioned to the Army Discharge Review Board for an upgrade of his discharge within that Boards 15-year Statute of limitations.

9. The issuance of a discharge under the provisions of Army Regulation 635-200, Chapter 10, required the applicant to have requested from the Army – voluntarily, willingly, and in writing – discharge in lieu of trial by court-martial. It is presumed that all requirements of law and regulation were met, and the rights of the applicant were fully protected throughout the separation process. He provides no evidence that would indicate the contrary.

10. 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. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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 warranted. The Board carefully considered the applicant's contentions, military record, and regulatory guidance. The Board considered his period of service and the misconduct which led to his discharge. One possible outcome was to deny relief; however, the Board gave weight to his post-service accomplishments and determined the evidence presented sufficient to warrant a recommendation for relief.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

█	:	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	█	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 for the period ending 14 January 1977 showing the character of service as Under Honorable Conditions.

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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, 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) states applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. 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.

4. 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.

a. This guidance does not mandate relief, but rather 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, 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//