

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 January 2024

DOCKET NUMBER: AR20230006613

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service 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)

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, in effect, he served for many years with no other adverse action. His discharge was based upon an isolated incident. He was falsely accused, and the people in charge of him were not held accountable. He was hired by the warden at Fort Riley, KS, following his discharge. He also worked at the [REDACTED]  
[REDACTED]
3. The applicant enlisted in the Regular Army on 13 September 1976 for a 3-year period. He was honorably discharged on 22 April 1979 for the purpose of immediate reenlistment. He reenlisted on 23 April 1979. 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 April 1981 for being derelict in the performance of his duties, from on or about 7 April 1981 to on or about 9 April 1981, by negligently failing to keep supervision of his weapon (M16A1). His punishment consisted of forfeiture of \$200.00 pay for one month and 14 days of extra duty.

5. Two DA Forms 4187 (Personnel Actions) show the applicant was confined by civil authorities on 18 December 1981 after being arrested for battery. He was released on bail, pending trial, on 24 December 1981.
6. Two additional DA Forms 4187, dated 12 April 1982, state the previous DA Forms 4187, dated 18 December 1981 and 24 December 1981, should be deleted as unavoidable. All charges were dropped, and the applicant should not be charged with lost time.
7. The applicant reenlisted on 19 April 1982 for a 3-year period.
8. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice. The applicable DD Form 458 (Charge Sheet) is not available for review. However, he was charged with the wrongful appropriation of U.S. currency of a value of about \$750.00.
9. The applicant consulted with legal counsel on 28 November 1984.
  - 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. After receiving legal counsel, he voluntarily requested discharge for the good of the service, under the provision of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged his understanding that by requesting a discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged making this request free of coercion. He further acknowledged understanding if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.
  - c. The applicant elected not to provide a statement in his own behalf.
10. The applicant's immediate and intermediate commanders recommended disapproval of the request for discharge for the good of the service, further stating the applicant received a Letter of Reprimand on 27 February 1984, for mismanagement of Dining Facility funds. The chain of command reposed special faith and confidence in his ability to manage the funds. On two occasions he betrayed that trust. Due to the seriousness of the alleged offense and the amount of money involved, the chain of command recommended he be tried by General Court-Martial.

11. The separation authority approved the applicant's request for discharge for the good of the service on 21 December 1984, further directing the issuance of a DD Form 794A (UOTHC Discharge Certificate), and reduction to the lowest enlisted grade.

12. The applicant was discharged on 9 January 1985, under the provisions of Army Regulation 635-200, for the good of the service – in lieu of trial by court-martial, in the rank/grade of private/E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his character of service was UOTHC. He was credited with 5 years, 8 months, and 17 days of net active service this period. He was awarded or authorized the:

- Army Service Ribbon
- Overseas Service Ribbon (2nd award)
- Army Achievement Medal
- Army Commendation Medal (2nd award)
- Army Good Conduct Medal (2nd award)
- Sharpshooter Marksmanship Qualification Badge with Rifle bar (M-16)

13. Discharges 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. A UOTHC characterization of service is normally considered appropriate.

14. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

#### BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant

2. 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. The Board concurs with the corrections described in the Administrative Note(s) below.

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:

Other than the corrections addressed in Administrative Note(s) below, the Board determined 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 otherwise insufficient as a basis for correction of the records of the individual concerned.

4/15/2024

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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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214 for the period ending 9 January 1985 is missing required entries. As a result, amend the DD Form 214 by adding the following in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 19790423 UNTIL 19820418

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) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides:

a. The ABCMR may, in its discretion, hold a hearing. 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.

b. 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.

3. Army Regulation 635-5 (Personnel Separations), 15 August 1979, in effect at the time, 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, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that 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.

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 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//