

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2024

DOCKET NUMBER: AR20230006691

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general).

APPLICANT'S SUPPORTING DOCUMENT(S) 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, 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 an excellent Soldier. He rose quickly thru the ranks to achieve specialist/E-4 in 18 months. Reenlisting shows he wanted to make the Army a career. He reenlisted with the caveat that he stayed stateside for a period of one year due to family/marital problems, which was reflected in his reenlistment contract. Two months later, he received orders to report to Korea. He showed his reenlistment papers to his superiors, to no avail. His actions consequently were a reflection of this act by the Army. Given the choice between reduction in rank to E-1 or discharge, he chose discharge, without being counseled as to what an UOTHC discharge meant.
3. On 20 October 1977, the applicant enlisted in the Regular Army. Upon completion of initial entry training, he was awarded military occupational specialty 16S (Man-Portable Air-Defense Systems Crewman). The highest grade he attained was E-4.
4. The applicant reenlisted on 25 April 1980 under the continental U.S.(CONUS) to CONUS station of choice reenlistment option. He selected Fort Lewis, WA as his duty station.

5. Orders 157-266 issued by Headquarters 2d Armored Division, Fort Hood, TX, on 5 June 1980, noted that the applicant would proceed on a permanent change of station to Fort Lewis, WA with a 1 August 1980 report date.
6. On 2 February 1981, the applicant was reported as absent without leave (AWOL).
7. A Commander's Report of Inquiry/Unauthorized Absence form noted the applicant had alcohol problems as well as trouble with duty performance. Additionally, the commander remarked the applicant stated that he desires not to go to a confinement facility; he was pending appeal on his Article 15 punishment. The applicant's record is void of documentation containing the specific facts and circumstances surrounding his Article 15.
8. The applicant was apprehended by civil authorities and returned to military control, on 9 March 1982.
9. Court-martial charges were preferred against the applicant on 22 March 1982, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL from on or about 2 February 1981 until on or about 9 March 1982.
10. On 23 March 1982, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a bad conduct discharge; and the procedures and rights that were available to him.
 - a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge 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. In his request for discharge, he acknowledged his understanding that by requesting 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 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 Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.
 - b. He declined to submit a statement in his own behalf.
11. On 1 April 1982, the applicant's commander recommended approval of the applicant's request for discharge, and further recommended the issuance of an UOTHC discharge.

12. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 12 April 1982, and directed the issuance of an UOTHC Discharge Certificate and reduction to the lowest enlisted grade.

13. The applicant was discharged accordingly on 22 July 1982. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for conduct triable by court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Code JFS and Reentry Codes 3, 3B, and 3C. He completed 3 years, 8 months, and 5 days of net active service this period with 393 days of lost time. He was awarded or authorized the Army Good Conduct Medal, Army Service Ribbon, and two marksmanship qualification badges.

14. The applicant's DD Form 214 does not show his continuous honorable active service period information that is required for members who honorably served their first term of enlistment [see Administrative Notes].

15. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

16. 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:

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 reenlisted for a CONUS to CONUS station of choice reenlistment option. He selected Fort Lewis, WA as his duty station. He was issued orders to Fort Lewis, WA, but instead went AWOL. The evidence also shows after being apprehended the applicant was charged with commission of an offense punishable under the UCMJ with a punitive discharge. He consulted with counsel and requested voluntary 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 an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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 amending the applicant’s DD Form 214 to show in the Remarks Block:

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 771020 UNTIL 800424

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.

[REDACTED]

[REDACTED] [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 635-8 (Separation Processing and Documents) provides: for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable, enter Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment). Then, enter the specific periods of reenlistment as prescribed above.
3. Army Regulation 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.

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.

//NOTHING FOLLOWS//