

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 January 2024

DOCKET NUMBER: AR20230006888

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

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

- DD Form 149 (Application for Correction of Military Record), 9 January 2022
- self-authored statement, 9 January 2023

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 was having marital problems and went absent without leave (AWOL) to try to save his marriage. He went back prior to the divorce and chose to be discharged. He is now 62 years old, and he knows it was a mistake to desert the military. He has two children and is happily married, has made a good living for his family, and has turned his life around. He is requesting a discharge upgrade for use of Department of Veterans Affairs (VA) benefits.
3. The applicant enlisted in the Regular Army on 11 September 1979, for a period of 4 years.
4. A DA Form 2-1 (Personnel Qualification Record) shows the highest rank/grade he obtained was private 2/E-2 with a date of rank of 13 November 1979. He was awarded military occupational specialty (MOS) 41J (Office Machine Repairman).
5. Three DA Forms 4187 (Personnel Action), show the following:
  - a. On 29 May 1980, his duty status changed from Present for Duty (PDY) to AWOL.

b. On 29 June 1980, his duty status changed from AWOL to Dropped from Rolls (DFR).

c. On 17 July 1980, his duty status changed from DFR to PDY when he surrendered to military authorities.

6. A DD Form 458 (Charge Sheet), dated 23 July 1980, shows he violated the Uniform Code of Military Justice (UCMJ). Article 86, for going AWOL on or about 29 May 1980 and remaining AWOL until on or about 17 July 1980.

7. The applicant consulted with legal counsel on 23 July 1980 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 an UOTHC discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 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 VA, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

b. He was advised that he could submit statements in his own behalf.

8. A DA Form 2496-1 (Disposition Form) dated 25 February 1981, from the Chief, Criminal Law Division, states the applicant was pending court-martial for AWOL and submitted a request for discharge for the good of the service. The Chief recommended approval of requested discharge with an UOTHC and to dismiss the charge(s) effective the date of discharge.

9. The applicant's immediate and intermediate commander recommended approval of his request for discharge under the provisions of AR 635-200, Chapter 10.

10. The separation authority, on 2 March 1981, approved the applicant's request for discharge in lieu of trial by court-martial. It further directs a discharge of UOTHC and reduction to the lowest enlisted grade.

11. Orders 46-15, dated 10 March 1981, reduce the applicant from E-2 to E-1 with an effective date of 25 February 1981.

12. The applicant was discharged accordingly on 12 March 1981. 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, in the grade of E-1. His service was characterized as UOTHC. His DD Form 214 also shows in:

- item 12c (net active service this period) – 1 year, 4 months, and 1 day
- item 29 (dates of time lost during this period) – from 10 April 1980 to 22 April 1980, from 29 May 1980 to 16 July 1980

13. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, from the Soldier, to avoid a trial by court-martial. An UOTHC character of service is normally considered proper.

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, other than his own statement, 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:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	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.

3/20/2024

X [REDACTED]

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CHAIRPERSON  
[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. AR 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.

d. An UOTHC discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and the good of the service.

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/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//