

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 January 2024

DOCKET NUMBER: AR20230006908

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)
- Self-Authored Letter
- Letter of Recommendation
- Unofficial Transcript

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 his application and self-authored letter:

a. He is requesting the change based on propriety, equity, and clemency. He understands that the military has strict standards and expectations for its members, and he accepts responsibility for not meeting those standards, during his time of service.

b. He wanted to explain how much he has grown and changed since that time. When he first joined the military, he was young and inexperienced. He did not fully understand the impact of his actions on his future. Since then, he has earned an associates and bachelor's degree in business. He is now working towards a master's degree in information technology He plans to pursue a doctorate degree in the future.

c. In addition to the applicant's academic achievements, he is also pursuing a career in real estate and has multiple entrepreneurial endeavors. He works fulltime and recently bought his first house, which he believes demonstrates his commitment to being a responsible and contributing member of society.

d. He understands his actions in the past have consequences, but he believes that granting his request for a change in his character of service would be equitable and just, and believes his current character is not accurately reflected in his previous discharge. The applicant has taken responsibility for his past mistakes and is now a different person than he was back then. He asks for compassion and clemency.

3. The applicant provides the following documents:

a. A letter of recommendation from the president and CEO of The National Society of Leadership and Success (NSLS), which states in effect, the applicant has been a key member of NSLS at University of Phoenix and has completed a rigorous leadership training program through the organization. The applicant committed to attending leadership training focused on collaborative teamwork, goal setting, high achievement, leadership skills and styles, self-motivation, and accountability. The applicant has learned how to engage a peer group to increase performance while completing a journal to document progress and goals. The applicant has proven to be well prepared for the next step in his professional journey.

b. A University of Phoenix unofficial transcript, which shows his enrollment status effective date as 27 February 2023 and shows his credits and grades. The entire transcript is available for the Board's review.

4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States), shows he enlisted in the Regular Army on 29 October 2003.

b. DA Forms 4187 (Personnel Action), shows the applicant's duty status was changed on: 13 August 2004, from present for duty (PDY) to absent without leave (AWOL) and 13 September 2004, from AWOL to dropped from rolls (DFR).

c. DD Form 443 (Deserter/Absentee Wanted by the Armed Forces) prepared on 13 September 2004 shows the applicant went AWOL on 13 August 2004 and was identified as DFR on 13 September 2004.

d. DA Forms 4187, show the applicant's duty status was changed on:

- 30 August 2005, from DFR to Confined by Civilian Authority (CCA)
- 31 August 2005, from CCA to Return to Military Control (RMC)
- 2 September 2005, from RMC to PDY

e. DD form 616 (Report of Return of Absentee), dated 31 August 2005, shows the applicant was RMC due to apprehension efforts.

f. DD Form 458 (Charge Sheet), dated 21 September 2005, shows he was pending a court-martial for one charge of AWOL from on or about 13 August 2004 to on or about 31 August 2005 and charges were preferred against the applicant.

g. Memorandum subject Request for Discharge in lieu of (ILO) Court-Martial, dated 27 September 2005, shows the applicant consulted with legal counsel and voluntarily requested to be discharged ILO trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), chapter 10. Legal counsel advised him of the basis for his contemplated trial by court-martial and the maximum permissible punishment authorized under the Uniform Code of Military Justice (UCMJ); of the possible effects of a discharge under other than honorable conditions if the request was approved; and of the procedures and rights available to him. The applicant chose not to submit statements in his own behalf.

h. Memorandum subject Request for Discharge ILO Court-Martial, dated 27 September 2005, from the trial counsel included the applicant's chain of command's recommendations. The applicant's chain of command recommended approval of his request and recommended a characterization of service of UOTHC discharge.

i. Memorandum subject Request for Discharge ILO Court-Martial, dated 6 October 2005 from the Staff Judge Advocate to the approval authority recommended approval of the applicant's request and issuance of an UOTHC discharge.

j. Memorandum subject Request for Discharge under the provisions of AR 635-200, Chapter 10, dated 6 October 2005 shows the approval authority approved the applicant's request for discharge, dismissed the charge and specification, and directed issuance of an UOTHC discharge.

k. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant enlisted on 29 October 2003 and was discharged on 19 October 2005. The applicant had completed 11 months and 1 day of active duty service. His character of service was UOTHC. He was discharged ILO trial by court-martial (Separation Code KFS/Reentry Code 4) with lost time from 13 August 2004 through 2 September 2005.

5. There is no indication the applicant petitioned the Army Discharge Review Board for review of his discharge processing within that boards 15-years statute of limitations.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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. 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. He completed 11 months and 1 day of service and he had 1 years and 18 days (383 days) of lost time. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry and under other than honorable conditions discharge. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The applicant provided a letter of recommendation and college transcripts in support of a clemency determination; however, the Board determined his submission does not outweigh the misconduct for which he was discharged. 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.

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.

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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. AR 15–185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, it states that 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. The ABCMR will decide cases based on the evidence of record. It is not an investigative agency.

3. AR 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to AD.

d. A discharge UOTHC is an administrative separation from the Service under conditions other than honorable. It may be issued ILO trial by court martial.

e. A Soldier who requests discharge as prescribed in chapter 10 may be discharged UOTHC if he/she has been afforded the opportunity (not less than 72 hours) to consult with a consulting counsel.

(1) The Soldier must certify in writing that he/she understands that he/she may receive a discharge under other than honorable conditions.

(2) The Soldier must understand the adverse nature and possible consequences of such a discharge.

(3) The Soldier must personally sign a request for discharge. A conditional request is not permitted.

(4) The consulting counsel will sign as a witness, indicating that he/she is a commissioned officer of The Judge Advocate General's Corps. A Soldier may waive consultation with a consulting counsel. Counsel will prepare a statement to this effect that will be attached to the file; the Soldier will state that the right to counsel has been waived.

f. A Soldier 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 in lieu of trial by court-martial.

4. AR 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code KFS is used for discharge ILO trial by court-martial.

5. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

- RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.
- RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waivable.
- RE-4: Applies to: Person separated from last period of service with a nonwaivable disqualification.

6. Published guidance to the BCM/NRs clearly indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs 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, BCM/NRs 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//