

IN THE CASE OF: ██████████

BOARD DATE: 8 February 2024

DOCKET NUMBER: AR20230006974

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

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) for the period ending 23 January 1984

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 wants his DD Form 214 to show an honorable discharge for his peace of mind.
3. The applicant enlisted in the Regular Army on 14 October 1982 for a 4-year period. Upon the completion of his initial entry training, he was awarded military occupational specialty 61B (Watercraft Operator). The highest rank he attained was private/E-2.
4. He accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 18 May 1983, for absenting himself from his unit without leave (AWOL), on or about 29 April 1983 until on or about 3 May 1983. His punishment consisted of reduction to private/E-1, forfeiture of \$300.00 pay, 14 days of confinement, and 14 days of extra duty.
5. Four DA Forms 4187 (Personnel Action) show the following changes in the applicant's duty status:
 - Present for Duty (PDY) to AWOL on 10 August 1983
 - AWOL to PDY on 16 August 1983

- PDY to AWOL on 1 September 1983
- AWOL to PDY on 19 September 1983

6. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 22 September 1983, for being AWOL, on or about 1 September 1983 until on or about 19 September 1983. His punishment consisted of forfeiture of \$100.00 pay for two months and 14 days of extra duty.

7. Three DA Forms 4187 show the following changes in the applicant's duty status:

- PDY to AWOL on 1 November 1983
- AWOL to Dropped from Rolls (DFR) on 30 November 1983
- DFR to Attached/PDY on 6 December 1983

8. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice on 8 December 1983. The relevant DD Form 458 (Charge Sheet) shows he was charged with two specifications of being AWOL, from on or about 10 August 1983 until on or about 16 August 1983, and on or about 1 November 1983 until on or about 6 December 1983.

9. The applicant consulted with legal counsel on or about 14 December 1983.

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 an 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 that 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. He was advised he could submit any statements he desired in his behalf. In a self-authored statement, he stated, in effect, he could not adapt to military life. He entered the Army at the age of 17 years. He needed to be with his parents more than he needed the Army. Staying in the Army would just make things worse.

10. The separation authority approved the applicant's requested discharge for the good of the service on 4 January 1984 and further directed the issuance of a DD Form 794A (UOTHC Discharge Certificate).

11. The applicant was discharged on 23 January 1984, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. His DD Form 214 confirms his character of service was UOTHC, with separation code JFS and reentry code RE-4. He was credited with 1 year and 24 days of net active service, with the following periods of lost time:

- 29 April 1983 to 2 May 1983
- 10 June 1983 to 20 June 1983
- 11 July 1983 to 12 July 1983
- 10 August 1983 to 15 August 1983
- 1 September 1983 to 18 September 1983
- 1 November 1983 to 5 December 1983

12. Administrative separations 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. An UOTHC character of service is normally considered appropriate.

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

6/3/2024

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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.

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 635-200, 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. 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. 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.

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/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.

//NOTHING FOLLOWS//