

IN THE CASE OF: ██████████

BOARD DATE: 7 February 2024

DOCKET NUMBER: AR20230007381

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service. 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. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR2001052416 on 19 April 2001.
2. The applicant states, in effect, during his out-processing, his was not given the chance to remain in the Army, and he was not given adequate representation. He made a bad decision as a young man for what he thought at the time was a good reason. He thought his mother was suffering from Alzheimer's disease, and he was the only one who could take care of her. He did not learn until it was too late that it was not true. Unfortunately, the only people who can corroborate his story are deceased.
3. The applicant's full military service record is not available for review in this case. However, the previous record of proceedings and a fully constituted DD Form 214 (Certificate of Release or Discharge from Active Duty) are available for the Board to conduct a fair and impartial review of the applicant's petition.
4. The applicant enlisted in the Regular Army on 11 April 1989. Upon the completion of his initial entry training, he was awarded military occupational specialty 45T (Bradley Fighting Vehicle Turret Mechanic). The highest rank he attained was specialist/E-4.
5. The previous ABCMR Record of Proceedings, AR2001052416, dated 19 April 2001, shows the following:

a. Court-martial charges were preferred against the applicant on 16 April 1992 for being absent without leave, on or about 5 September 1991 until on or about 8 April 1992.

b. On that same date, he consulted with legal counsel. 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 available to him. Subsequent to receiving legal counsel, he voluntarily requested a discharge for the good of the service in lieu of trial by court-martial under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged that he could receive an undesirable discharge and that he understood the effects of receiving such a discharge.

c. The separation authority approved the applicant's request on 13 October 1992, and further directed the applicant be reduced to the lowest enlisted grade and the issuance of a UOTHC discharge certificate.

6. The applicant was discharged on 24 November 1992, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. His DD Form 214 confirms his characterization of service was UOTHC, with separation code KFS and reentry code RE-3. He was credited with 3 years and 11 days of net active service, with lost time from 5 September 1991 to 7 April 1992. He was awarded or authorized the:

- Army Achievement Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Expert Marksmanship Qualification Badge with Grenade bar
- Marksman Marksmanship Qualification Badge with Rifle bar (M-16)

7. The Army Discharge Review Board considered the applicant's request for an upgrade of his UOTHC characterization of service on 19 February 1999. After careful consideration, the Board determined that he was properly and equitably discharged. The Board denied his request.

8. The ABCMR reviewed the applicant's petition for an upgrade of his discharge on 19 April 2001. After careful consideration, the Board determined the evidence presented did not demonstrate the existence of a probable error or injustice. Accordingly, his request for relief was denied.

9. 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. An UOTHC character of service is normally considered appropriate.

10. 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. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the applicant's AWOL from 5 September 1991 until on or about 8 April 1992. The applicant provided no post service achievements or character letters of support attesting to his honorable conduct for the Board to weigh clemency determination. Therefore, the Board denied relief.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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:

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.

2/22/2024

X

CHAIRPERSON

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. 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 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.
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. 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.

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 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, 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//