

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 5 March 2024

DOCKET NUMBER: AR20230007400

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

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), 16 March 1984
- letter from Mr. E.M. (Assistant Veterans Service Officer (VSO), 01 May 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 that he was discharged from the Army for being absent without (AWOL) for less than 30 days. At the time of his discharge, he was informed that if he kept out of trouble for one year, he could apply for an upgrade to his characterization of service.

3. The applicant enlisted in the Regular Army on 8 June 1982, for 4 years. The highest rank/grade he held was private first class/E-3.

4. Three DA Forms 4187 (Personnel Action) show, effective 17 August 1983, the applicant's unit reported him AWOL, and on 14 September 1983 he was dropped from the rolls. His duty status changed to return to military control when he surrendered to military authorities on 6 February 1984.

5. On 7 February 1984:

- a. The applicant elected not to undergo a separation medical examination.

b. Court-martial charges were preferred against the applicant. The DD Form 458 (Charge Sheet) shows he was charged with AWOL on or about 17 August 1983 and did remain so absent until on or about 6 February 1984.

6. The applicant consulted with legal counsel on 8 February 1984 and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the Uniform Code of Military Justice (UCMJ); the possible effects of a 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 Veterans Administration (VA), and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

b. He elected not to submit a statement in his own behalf.

7. On 14 February 1984 and 16 February 1984, the immediate and intermediate commanders recommended approval of the applicant's request for discharge and the issuance of a discharge UOTHC.

8. On 28 February 1984, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial and ordered the issuance of an UOTHC discharge and reduction to the lowest enlisted grade.

9. The applicant was discharged accordingly on 16 March 1984, under the provisions of AR 635-200, Chapter 10, for the good of the service - in lieu of trial by court-martial, with an UOTHC characterization of service in the grade of E-1. He received a separation code of "KFS" and a reenlistment code "3", "3B", and "3C." His DD Form 214 contains the following entries:

a. He completed 1 year, 3 months, and 20 days of net active service during the period covered.

b. Block 29 (Dates of Time Lost During this Period) the entry "830817 TO 840205" (approximately 173 days).

10. The applicant provides a letter from Mr. E.M., Assistant VSO, Nemaha County, NE, stating the applicant is homeless, and applying for food stamps, he was recently in a car accident and is recovering. The applicant came into their office requesting help and received temporary help through their county veteran's aid fund. Mr. E.M. believes the applicant is genuinely remorseful, so he helped him fill out the DD from 149 and is trying to arrange care for him at the VA. He asks the board for consideration and hopes the applicant receives a second chance.

11. There is no indication the applicant petitioned to the Army Discharge Review Board for an upgrade of his discharge within that Boards 15-year Statute of limitations.

12. Regulatory guidance in effect at the time provided discharges under the provision of AR 635-200, Chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

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

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 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. 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 the character service.

b. The Board noted that despite his AWOL, the applicant surrendered to military authorities and had no intention of remaining AWOL. Additionally, the applicant provides a letter stating the applicant is homeless, and applying for food stamps, he was recently in a car accident and is recovering. The letter also states the applicant is genuinely remorseful. The Board determined the applicant's service clearly did not rise to the level required for an honorable discharge (given his AWOL); however, a general, under honorable conditions characterization of service is appropriate under published DoD

guidance for liberal consideration of discharge upgrade requests. The Board further unanimously determined no change to the reason for separation and/or associated Separation/RE codes is warranted as the underlying reason for separation remains the same.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 for the period ending 16 March 1984 showing:

- Character of Service: General, Under Honorable Conditions
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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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 635-200, in effect at the time, set forth the primary authority for separating enlisted personnel.

a. Chapter 10 states in part, a member who has committed an offense or offenses, the punishment for any of which, under the UCMJ and the Manual for Court-Martial, include bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. In addition, the request for discharge may be submitted at any stage in the processing of the charges until the court-martial convening authority's final action on the case. Commanders will also ensure that a member will not be coerced into submitting a request for discharge in lieu of trial by court-martial. The member will be given a reasonable time (not less than 72 hours) to consult with a consulting counsel and to consider the wisdom of submitting such a request for discharge.

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 under other than honorable discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and in lieu of trial by court-martial.

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//