

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2024

DOCKET NUMBER: AR20230007518

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) with self-authored statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty) ending on 26 March 1986
- Pay stub, Compass Group USA, Inc., dated 11 March 2021

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 went on emergency leave to care for his sick mother. Once her condition stabilized, he returned to the U.S. Army and explained to the Chaplain and Military Police that he needed more sick leave. His life was smashed by the Army when they did not assist him in addressing his emergency leave issue.
3. The applicant enlisted in the Regular Army on 23 May 1985 for a 4-year period. Upon the completion of his initial entry training, he was awarded military occupational specialty 63B (Light Wheeled Vehicle Mechanic).
4. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 24 September 1985 for absenting himself from his unit without authority (AWOL) on or about 15 September 1985 until on or about 17 September 1985. His punishment consisted of forfeiture of \$133.00 pay (suspended until 30 October 1985), seven days of extra duty, and seven days restriction. The suspension of pay was vacated on 22 October 1985 and ordered duly executed due to

the applicant's additional period of AWOL from on or about 14 October 1985 until on or about 15 October 1985.

5. The applicant's DA Form 2-1 (Personnel Qualification Record) shows he was reported AWOL and DFR (dropped from the rolls) on 29 November 1985. Additionally, a DA Form 4187 (Personnel Action) shows the applicant's duty status changed from Dropped from the Rolls to Present for Duty on 3 January 1986.

6. The applicant elected not to undergo a separation medical examination on 3 January 1986.

7. In a Personnel Control Facility interview on 5 January 1986, the applicant stated, in effect, he was afraid of what he was going through. His parents were separated, and his mother was having a hard time paying her bills. His brother was fired from his job and was unable to help out. He requested TDP (Trainee Discharge Program) when he was in advanced individual training, but they never gave it to him. An additional comment from the Cadre states, [the applicant] went AWOL enroute to Panama. He never requested a compassionate reassignment.

8. Court-martial charges were preferred against the applicant on 8 January 1986 for a violation of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows the applicant was charged with being AWOL from on or about 29 November 1985 until on or about 3 January 1986.

9. The applicant consulted with legal counsel on 8 January 1986.

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 a 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 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 VA, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

c. He elected not to provide a statement in his own behalf.

10. The applicant's immediate commander recommended approval of the request for discharge for the good of the service on 27 January 1986 and further recommended the issuance of a DD Form 794A (UOTHC Discharge Certificate).
11. The separation authority approved the applicant's request for discharge for the good of the service on 13 February 1986, further directing the issuance of a UOTHC Discharge Certificate.
12. The applicant was discharged on 26 March 1986, under the provisions of Army Regulation 635-200, for the good of the service – in lieu of trial by court-martial. His DD Form 214 confirms his character of service was UOTHC with separation code KFS and reenlistment code RE-3, 3B, 3C. He was credited with 9 months of net active service this period with lost time from 29 November 1985 to 2 January 1986.
13. The applicant provides a copy of a pay stub from Compass Group USA, Inc, for the pay period 26 February 2021 to 11 March 2021.
14. 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. A UOTHC characterization of service is normally considered appropriate.
15. The Board should consider the applicant's argument and/or evidence 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 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. 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 his separation processing. Additionally, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. 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:

<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.

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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. 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 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.

//NOTHING FOLLOWS//