

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2024

DOCKET NUMBER: AR20230007531

APPLICANT'S REQUEST:

- upgrade of his discharge under other than honorable conditions (UOTHC) or
- issuance of two separate DD Forms 214 (Certificate of Release or Discharge from Active Duty) to reflect his two periods of enlistment

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Work Evaluation checklist

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, U.S. Code (USC), 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 effect, he needs a DD Form 214 showing he was honorably discharged upon completion of his first term of enlistment. He made a terrible mistake during his second period of enlistment when he went absent without leave (AWOL) to chase after his wife and children. He needs this correction in order to be eligible to apply for a job as a Compensated Work Therapist (CWT) at a Department of Veterans Affairs hospital. The hospital would like to hire him, but his current DD Form 214 prevents them from doing so because it combines both periods of service on one DD Form 214 which only shows his characterization of service as UOTHC. He is a very good, hard-working person. His work evaluation as a CWT shows his performance is excellent.

3. On 16 July 1985, the applicant enlisted in the Regular Army for a period of 3 years. On 18 July 1985, he extended his term of enlistment for an additional 14 weeks in order to qualify for an enlistment program. Upon completion of initial entry training, he was assigned to a unit at Fort Riley, KS. He was advanced to the rank/pay grade of specialist (SPC)/E-4 on 1 December 1987.

4. On 1 September 1988, he reenlisted for a period of 4 years.
5. The applicant's unit reported the following changes in his duty status on the dates shown:
 - From Present for Duty to AWOL on 17 December 1988
 - From AWOL to Dropped from Rolls (DFR) on 16 January 1989
 - From DFR to Returned to Military Control after being apprehended by civilian authorities on 30 January 1989
6. A DD Form 458 (Charge Sheet) shows on 3 February 1989, court-martial charges were preferred against the applicant for violation of Article 86 of the Uniform Code of Military Justice (UCMJ) by going AWOL on or about 17 December 1988 and remaining so absent until on or about 30 January 1989.
7. On 3 February 1989, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, in lieu of trial by court-martial. He consulted with legal counsel and was advised of the basis for the trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him. He elected not to submit statements in his own behalf or to have a physical evaluation prior to his separation.
8. The applicant's immediate commander recommended approval of his request with a discharge UOTHC.
9. On 28 February 1989, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial, with his service characterized as UOTHC. He further directed the applicant be reduced from E-4 to the lowest enlisted grade.
10. Orders and the applicant's DD Form 214 show he was discharged on 15 March 1989, in the rank/grade of private/E-1, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "For the Good of the Service - In Lieu of Trial by Court-Martial" with Separation Code "KFS" and Reenlistment Code "RE-3/3b." His service was characterized as UOTHC.
 - a. He was credited with completing 3 years, 6 months, and 17 days of net active service this period. He had lost time from 17 December 1988 to 29 January 1989.
 - b. Block 18 (Remarks) of his DD Form 214 contains the entry, "IMMEDIATE REENLISTMENT THIS PERIOD: [REDACTED]" (Indicating from [REDACTED] [REDACTED] There is no entry specifying the applicant's period of honorable service (see Administrative Notes).

11. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in lieu of trial by court-martial. In doing so, he would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

12. The applicant provides a Work Evaluation checklist that shows he received ratings of excellent in all evaluated categories on 24 March 2023.

13 Army Regulation 635-5 (Personnel Separations - Separation Documents), in effect at the time, prescribed the separation documents that must be prepared for Soldiers at the time of retirement, discharge, or release from active duty service or control of the Active Army. It stated, in pertinent part, a DD Form 214 would not be reissued, in part, except when it is determined that the original DD Form 214 cannot be properly corrected by issuance of a DD Form 215 or if the correction would require the issuance of more than two DD Forms 215.

14. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition. Applicants do not have a right to a hearing before the ABCMR.

BOARD DISCUSSION:

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

b. The DD Form 214 is a record of continuous honorable service. It starts with entry on active duty and ends with exit from active duty. Unless there is a break in service of

one day or more, only one DD Form 214 is issued for the continuous period of active service, regardless of the character of service received.

c. The Board did note however that the applicant’s service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

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:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant’s DD Form 214 for the period ending 15 March 1989, by adding in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 850716 UNTIL 880831

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the characterization of his discharge.



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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. 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 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. It is not an investigative body. 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.

3. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

4. Army Regulation 635-5 (Personnel Separations – Separation Documents), in effect at the time, prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes the standardized policy for preparing and distributing the DD Form 214. It states the DD Form 214 provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

a. Paragraph 1-4b(5) of the regulation in effect at the time stated that a DD Form 214 would not be prepared for enlisted Soldiers discharged for immediate reenlistment in the Regular Army.

b. Paragraph 2-4h(18) of the regulation currently in effect states that item 18 documents the remarks that are pertinent to the proper accounting of the separating Soldier's period of service. Subparagraph (c) states that for enlisted Soldiers with more than one enlistment period during the time covered by the DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify the appropriate dates. For Soldiers who have previously reenlisted without being issued a DD Form 214 and who are later separated with any characterization of service except "honorable," enter "CONTINUOUS HONORABLE ACTIVE SERVICE FROM" (first day of service which DD Form 214 was not issued) UNTIL (date before commencement of current enlistment)." Then, enter the specific periods of reenlistments as prescribed above.

5. 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, 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//