

IN THE CASE OF: ██████████

BOARD DATE: 7 February 2024

DOCKET NUMBER: AR20230007586

APPLICANT REQUESTS: reconsideration of his previous request for 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 293 (Application for the Review of Discharge)
- buddy statement from Staff Sergeant (SSG) retired ██████████, 7 April 2023
- buddy statement from Ms. ██████████, 10 April 2023

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 AR20120002777 on 7 August 2012.

2. The applicant states, he realizes he made bad decisions during his time in the Army, but he was young and ignorant and has regretted his poor judgment his whole life. He also regrets not fighting to stay in the Army instead of following someone's bad advice that did not have his best interest at heart. He realizes that we all must pay for our mistakes, but he asks the board not to let his lack of judgment outweigh his entire Army service. The reason for his request is when his time comes; he would like to rest proudly alongside the rest of his fellow veterans and friends.

3. The applicant enlisted in the Regular Army on 29 August 1978, for 4 years. He reenlisted on 14 October 1982. The highest rank/grade he held was specialist/E-4.

4. On 27 May 1980, he accepted non-judicial punishment under Article 15, of the Uniform Code of Military Justice, for on or about 1 May 1980, violation of a lawful general regulation. His punishment was reduction to private first class/E-3 (suspended for 90 days), forfeiture of \$100.00 pay for one month and extra duty for 14 days.

5. The complete facts and circumstances surrounding his discharge are not available for review. However, his record contains a dully constituted DD Form 214 that shows the following:

a. On 14 February 1985, the applicant was discharged under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), 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 of "RE-3."

b. He completed 6 year, 5 months, and 15 days of net active service with 3 years, 3 months, and 23 days of foreign service during the period covered.

c. Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows:

- Army Service Ribbon
- Overseas Service Ribbon
- Noncommissioned Officer Professional Development Ribbon
- Army Good Conduct Medal (2nd Award)
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)

d. Block 18 (Remarks) shows the entry - "IMMEDIATE REENLISTMENT THIS PERIOD: 821014 – 850214".

6. The applicant provides two buddy statements from SSG A.A. and Ms. D.B. which state:

a. SSG [REDACTED] and the applicant were stationed together in Friedberg, Germany, and were roommates for a good period from 1978 to 1980. He considers the applicant a good friend, a responsible Soldier, and a great person you can count on to be there for you and other Soldiers. He believes it was unfortunate that the applicant's career in the Army ended due to a young and ignorant mistake because the applicant would have stayed in the Army and served for another 20 to 30 years as a good soldier. Based on his conversations with the applicant, he knows the applicant regrets not fighting to stay in the Army, and if he could, he would enlist in the Army again without hesitation. Since his discharge from the Army, the applicant has been a productive and contributing citizen who deserves to have his discharge amended from UOTHC to honorable.

b. Ms. [REDACTED] realizes that back then, she and the applicant, like everyone else, were both young and ignorant of so many things that could change and shape their lives. Unfortunately, the applicant made a mistake that affected the outcome of his military career. She believes the applicant regrets his mistake and is not fighting harder to stay

in the Army but believes he received bad advice. The applicant has learned from his mistakes and has been a law-abiding citizen and a good father since his discharge from the Army, contributing to society like any good American. She asks the board to grant her husband relief so he can be the proud Soldier he once was and can one day be laid to rest as a proud Soldier.

7. The applicant petitioned the Army Discharge Review Board for upgrade of his service characterization. On 24 October 1991, after careful consideration the Board determined he was properly and equitably discharge.

8. The ABCMR considered the applicant's request for upgrade of his UOTHC discharge on 7 August 2012. After reviewing the application and all supporting documents, the Board determined relief was not warranted. The Board found the evidence presented did not demonstrate the existence of a probable error or injustice as a basis for correction of the applicant's records.

9. The issuance of a discharge under the provisions of Army Regulation 635-200, Chapter 10, required the applicant to have requested from the Army – voluntarily, willingly, and in writing – discharge in lieu of trial by court-martial. It is presumed that all requirements of law and regulation were met, and the rights of the applicant were fully protected throughout the separation process. He provides no evidence that would indicate the contrary.

10. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency 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 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 sufficient evidence of in-service mitigating factors to overcome the misconduct and correct the applicant's DD Form 214 with an upgrade to honorable. The Board considered the applicant prior periods of honorable service and determined the applicant's punishment was harsh and not equitable based on the offenses.

2. The Board under liberal consideration found there was an error and injustice during the applicant discharge. Furthermore, the Board concluded there was sufficient evidence of an error or injustice which also warrants a change in the applicant's narrative reason for separation to reflect Secretarial Authority. The Board found the applicant's post service achievements and character letters of support commendable, attesting to his honorable conduct for the Board to weigh a clemency determination. The Board agreed that relief is warranted and upgraded the applicant's discharge to honorable and correction to his narrative reason for separation as Secretarial Authority.

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 Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending his DD Form 214 showing his characterization of service as honorable and a narrative reason of Secretarial Authority.

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.

ADMINISTRATIVE NOTE(S): N/AREFERENCES:

1. Army Regulation 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 Uniform Code of Military Justice (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.

2. 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//