

IN THE CASE OF: ██████████

BOARD DATE: 15 February 2024

DOCKET NUMBER: AR20230007605

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

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record), 19 April 2023
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 19 April 2023
- DD Form 214 (Report of Separation from Active Duty), 17 August 1975

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, in effect, he should have received a general discharge; however, he has found that his original discharge was not changed a general discharge based on the decision at court-martial.
3. The applicant enlisted in the Regular Army on 11 August 1975, for a 4-year period. He was awarded military occupational specialty 13E (Cannon Fire Direction Specialist). The highest rank he attained was specialist four (SP4)/E-4.
4. The applicant received company grade non judicial punishment on 28 November 1977, for absenting himself without authority on or about 27 July 1977 and remaining absent until on or about 23 August 1977. His punishment imposed was reduction to private/E-2, forfeiture of \$100.00 pay for two months (suspended three months), and 45 days of restriction and extra duty.
5. Four DA Forms 4187 (Personnel Actions) show the following changes in the applicant's duty status:

- Absent Without Leave (AWOL) to Present for Duty (PDY) on 15 February 1978, surrendered to military authorities
- PDY to AWOL on 2 March 1978
- AWOL to Dropped from Rolls (DFR) on 31 March 1978
- DFR to Attached on 14 June 1978, apprehended by civilian authorities

6. A DA Form 3836 (Notice of Return of US Army Member from Unauthorized Absence) states the applicant was apprehended by the Federal Bureau of Investigation on 15 June 1978.

7. Three additional DA Forms 4187 show the following changes in the applicant's duty status:

- PDY to AWOL on 27 July 1977
- AWOL to Confined Military Authorities on 23 August 1977, surrendered to military authorities
- Confined Military Authorities to PDY on 27 August 1977

8. Court-martial charges were preferred against the applicant on 22 June 1978, for violation of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows he was charged with one specification of being AWOL from on or about 2 March 1978 until on or about 14 June 1978.

9. On 27 June 1978, the applicant consulted with his defense counsel and was advised by counsel that at the time they had not received the necessary documentation and/or records with which to obtain a conviction at a court-martial. The applicant was advised by military counsel that they could not completely advise him without the records, nevertheless the applicant waived all defenses that may have become known had his defense counsel been able to review his records.

a. He knowingly, willingly, and voluntarily declared that he was AWOL from the Army.

b. He made this admission for administrative purposes only so he may process out of the Army and realized in doing so he may be given an other than honorable discharge.

c. He further declared that his military defense counsel had explained to him with his complete understanding and satisfaction, all the legal and social ramifications of the type of discharge and what it would mean to him in the future.

d. He further declared that the agreement only pertained to his unauthorized AWOL. He realized the Army may (anytime prior to his discharge) prefer charges for any other military crimes that may have been pending against him.

10. On the same date, the applicant's immediate commander received the applicant's request for discharge for the good of the service. The commander recommended the applicant's request be approved and he receive a discharge certificate UOTHC. Additionally stating, the applicant's conduct has rendered his triable by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge.

11. The applicant's intermediate commander recommended approval of the request for discharge for the good of the service and further recommended the issuance of an UOTHC discharge.

12. The separation authority approved the applicant's request for discharge on 19 July 1978, in lieu of trial by court-martial. He directed the applicant be reduced to the lowest enlisted grade and the issuance of a DD Form 794A (UOTHC Discharge Certificate).

13. The applicant was discharged accordingly on 17 August 1978, under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, for administrative discharge - conduct triable by court martial. His DD Form 214 confirms his service was characterized as UOTHC, with separation code of "JFS" and reenlistment code "3 and 3B. He was credited with 2 years, 7 months, and 18 days of net active service this period, with 142 days of time lost.

14. The Army Discharge Review Board considered the applicant's request for an upgrade of his UOTHC characterization of service on or about 9 March 1981. After careful consideration, the Board determined that he was properly and equitably discharged and denied his request for relief.

15. Administrative separations under the provisions of Army Regulation 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial. An UOTHC character of service is normally considered appropriate.

16. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the multiple AWOL offenses in the record and the last AWOL offense ending only by apprehension of the civilian authorities, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : 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.

5/14/2024

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. 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 UOTHC is normally considered appropriate.

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.

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//