

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 February 2024

DOCKET NUMBER: AR20230007777

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) discharge.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Personal statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Character reference letters (7)

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 AR20130006437 on 21 November 2013.

2. The applicant states:

a. He does not have many regrets in his life, but not completing his commitment to the Army is one of them. At the time, his 19-year-old mind just did not comprehend the mistakes he was making while in the Army. He loved being a Soldier and being in Korea. He did not have the luxury of growing up with his father or any male role models in his household and it was only in the Army that he learned so much about being a man. While serving, he built relationships that will last a lifetime. Sometimes he is ashamed to be celebrated on Veteran's Day, because of the character of his discharge. Then he is reminded by his Army brothers and sisters that he did serve honorably with at Camp Casey, Korea, and he should feel proud of himself as they are proud of him.

b. Since leaving the Army, he has strived to give back to his community, he has worked in the non-profit field for over 20 years; including working with homeless, veterans, people with mental and physical disabilities, and people with addictions. He is currently working with individuals with criminal backgrounds. He was also recently appointed by the Mayor of the [REDACTED] to serve on the [REDACTED]

Police Commission for a two-year term. He has assembled some character reference letters that he hopes the Board will consider in deciding whether to upgrade the characterization of his discharge so he can publicly acknowledge his prior service with pride.

3. The applicant's complete military service record is not available for review. This case is being considered based upon documents in the available record and those provided by the applicant.

4. The applicant enlisted in the Regular Army on 25 July 1982. Upon completion of initial entry training, he was assigned to a unit in South Korea.

5. Court-martial charges were preferred against the applicant. The relevant DD Form 458 (Charge Sheet) and his subsequent voluntary request for administrative discharge 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 are not available for review. However, the previous ABCMR Record of Proceedings provides the following:

a. While serving in Korea, the applicant was absent without leave (AWOL) from 1 March 1983 until he was apprehended on 17 March 1983.

b. On 17 March 1983, the applicant and another Soldier were arrested on the charges of robbery, aggravated assault, carrying a concealed weapon, AWOL, and an identification card violation.

c. As a result, court-martial charges were preferred against the applicant. The command recommended trial by a special court-martial.

d. On 23 March 1983, after consulting with counsel and being advised of his rights and options, the applicant submitted a voluntary request for separation under the provisions of Army Regulation 635-200. He acknowledged he was guilty of the charges or lesser included charges and that, if the request was accepted; he could receive a discharge under other than honorable conditions and be furnished a UOTHC Discharge Certificate. He acknowledged that such a discharge would deprive him of many or all of his benefits as a veteran, and that he could expect to experience substantial prejudice in civilian life if he received an under other than honorable conditions discharge.

e. The separation authority approved the applicant's request under the provisions of Army Regulation 635-200, Chapter 10. He directed the applicant be furnished a UOTHC Discharge Certificate and be reduced to the lowest enlisted grade.

6. The applicant's DD Form 214 confirms he was discharged in the rank/grade of E-1 on 4 May 1983, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. His service was characterized as UOTHC. He was credited with completion of 9 months and 3 days of net active service. He had time lost from 2 March 1983 to 18 March 1983.
7. Army Regulation 635-200, Chapter 10, provides for 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.
8. The applicant petitioned the ABCMR for relief. On 25 November 2013, the applicant was informed the Board had considered his application under procedures established by the Secretary of the Army and had denied his request for relief.
9. In addition to the previously discussed evidence, the applicant provides seven character reference letters which are available in their entirety for the Board's consideration. The authors of the letters include supervisors, instructors, colleagues, and acquaintances who speak favorably about the applicant's work ethic, compassion, motivation, skills, and positive impact on his community.
10. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and found the character reference letters the applicant provided insufficient in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20130006437 on 21 November 2013.

6/3/2024

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. 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.

2. 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.

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, 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//