

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 February 2024

DOCKET NUMBER: AR20230007852

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to honorable.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-authored letter
- DD Form 214 (Report of Separation from Active Duty)
- DD Form 215 (Correction to DD Form 214)

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 made mistakes during his enlistment, being young and far from home. He has spent the last 40 years being a responsible citizen and making a living as a painter. Once a Veteran, always a Veteran. He prays for the opportunity to live his remaining life as a proud and honorable Soldier. He is working with at-risk young men, trying to direct them onto the right path.

3. On 26 January 1976, the applicant enlisted in the Regular Army, for 4 years. Upon completion of training, he was awarded military occupational specialty 16P (Chaparral Crewman).

4. On or about 6 June 1977, the applicant was reported as absent without leave (AWOL) from 0500 hours until 0830 hours.

5. On or about 15 July 1977, the applicant was reported AWOL a second time, from 0500 hours until 0815 hours.

6. On 2 August 1977, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for going AWOL on two occasions. His punishment included forfeiture of \$105.00 pay for one month, and seven days extra duty and restriction.
7. On 14 September 1977, the applicant accepted NJP under Article 15 of the UCMJ, for being derelict in the performance of his duties, he failed to keep awake while on guard duty, on or about 25 August 1977. His punishment included forfeiture of \$97.00 pay for one month, and 14 days restriction.
8. On 19 October 1977, the applicant was reported AWOL a third time and remained absent until he returned to military authorities on 21 October 1977.
9. On 14 November 1977, the applicant accepted NJP under Article 15 of the UCMJ, for going AWOL from on or about 19 October 1977, until on or about 21 October 1977. His punishment included forfeiture of \$97.00 pay for one month, and 14 days extra duty and restriction.
10. A Military Police Report shows the applicant was arrested for failing to comply with a lawful general order and illegal turnover of U.S. tax free items. On 30 June 1977, he was observed placing stereo equipment into a vehicle that belonged to a Turkish National.
11. A Criminal Investigation Division Report of Investigation notes on 17 October 1977, the applicant was under investigation for obstructing U.S. mail. He was transporting a sack containing 353 pieces of mail, which had been found on the side of the road. The applicant subsequently admitted that the sack had fallen from the truck, and he made little attempt to recover it, nor did he report its loss.
12. A Military Police Report notes the applicant was arrested for his involvement in the robbery of another Soldier. On 22 October 1977, he was with a group of Soldiers that attacked and robbed another Soldier of his of his wallet.
13. Court-martial charges were preferred against the applicant on 19 January 1978, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with two specifications of violating a general lawful order for transferring stereo equipment to a person not authorized such goods and for failing to recover or report the loss of a sack of U.S. mail; and two specifications of robbery for stealing a wallet and a box of chicken from another Soldier.
14. The applicant consulted with legal counsel on 7 February 1978, and was advised of the basis for the contemplated trial by court-martial; the maximum permissible

punishment authorized under the UCMJ; the possible effects of an undesirable discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested 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. In his request for discharge, he acknowledged his understanding that by requesting 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 further acknowledged he understood that 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 Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

b. He declined to submit a statement in his own behalf.

15. On 10 February 1978, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

16. The applicant's record is void of the separation authority's memorandum approving his request for discharge for the good of the service – in lieu of trial by court-martial.

17. The applicant was discharged on 2 March 1978. His DD Form 214 confirms he was discharged 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. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Program Designator code JFS and Reentry codes 3 and 3C. He completed 2 years, 1 month, and 7 days of net active service this period.

18. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

19. 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. The Board carefully considered the applicant's request, supporting documents, his statement, the evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests based on liberal consideration and/or clemency, but ultimately found relief was not warranted.

2. The Board found insufficient evidence of in-service mitigating factors upon which to base liberal consideration and the applicant provided no evidence of post-service achievements or letters of reference 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 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 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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.

b. 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.

c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

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 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//