

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 20 February 2024

DOCKET NUMBER: AR20230007917

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. Additionally, he requests personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge)

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 was sent to Fort Dix, NJ, on a transfer by his commander for a compassionate reassignment because his father had a short time to live. The facts of the charges are wrong, things don't coincide with his dates of service, and he didn't break restriction. He was never subordinate, the things written about him are false.
3. The applicant enlisted in the U.S. Army Reserve (USAR) on 27 July 1978, and entered initial active duty for training (ADT) on 8 October 1978.
4. While in training, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on/for:
 - 8 November 1978, for breaking restriction, on or about 5 November 1978; his punishment included forfeiture of \$45.00 pay and 7 days extra duty
 - 25 January 1979, for being disrespectful in language to a superior noncommissioned officer, on or about 20 January 1979; his punishment included forfeiture of \$100.00 of pay for two months, and 14 days confinement

5. On 10 February 1979, the applicant was honorably released from ADT. His DD Form 214 (Report of Separation from Active Duty) shows he completed 4 months and 3 days of active service. He was release back to his Reserve unit.
6. On 13 August 1979, the applicant was involuntarily ordered to active duty service.
7. On 16 October 1980, the applicant accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty, on or about 11 October 1980. His punishment included reduction to E-3, forfeiture of \$148.00 of pay, and 14 days extra duty.
8. Before a special court-martial on 21 January 1981, at Fort Hood, TX, the applicant was found guilty of one specification of going absent without leave (AWOL) from on or about 2 December 1980 to on or about 1 January 1981. The court sentenced him to confinement at hard labor for 30 days, reduction to E-1, and detention of \$334.00.
9. Special Court-Martial Order 3, issued by Headquarters, 2d Battalion, 58th Infantry, 2d Armored Division, Fort Hood, TX, on 29 January 1981, noted that the applicant's sentence to confinement at hard labor for 30 days was suspended until 31 May 1981, at which time, unless the suspension was sooner vacated, the unexecuted portion of the sentence would be remitted without further action.
10. On 14 February 1981, the applicant was reported as AWOL a second time, and remained absent until he surrendered/returned to military authorities on 18 February 1981.
11. On 23 February 1981, the applicant was reported as AWOL a third time, and subsequently dropped from unit rolls as a deserter.
12. Court-martial charges were preferred against the applicant on 24 February 1981, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with two specifications of going AWOL from 14 February to 18 February 1981 and on or about 23 February 1981, he did remain so absent.
13. On 6 May 1981, the applicant returned to the control of military authorities at Fort Dix, NJ.
14. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. However, his DD Form 214 (Certificate of Release or Discharge from Active Duty) for this period of service shows he was discharged on 17 June 1981, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for conduct triable by court-martial. He was discharged in the lowest enlisted grade and his service was

characterized as UOTHC. He was assigned Separation Code JFS and Reentry Codes 3, and 3B. He completed 1 year, 6 months and 18 days of net active service this period with 108 days of lost time.

15. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, she 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.

16. 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 determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.
2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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. The evidence shows the applicant was charged with commission of an offense punishable under the UCMJ with a punitive discharge (2 counts of AWOL). After being charged, he presumably 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, based on available evidence. 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.

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 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. Paragraph 2-9 states 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.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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 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.

4. 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.

//NOTHING FOLLOWS//