

IN THE CASE OF: ██████████

BOARD DATE: 31 January 2024

DOCKET NUMBER: AR20230007978

APPLICANT REQUESTS: his under other than honorable conditions (UOTHC) discharge be upgraded.

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Report of Separation from Active Duty)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 requests clemency from his past actions which led to this unfavorable discharge. His actions at that time were the actions of a child who did not understand how to properly deal with anger. He was not aware of any counselling available at that time. He has since grown and bettered both himself and his community. He humbly asks for this change to his record.
3. The applicant enlisted in the Regular Army on 31 October 1972 for three years. His military occupational specialty was 76Y (Supply Clerk).
4. The applicant accepted non-judicial punishment (NJP), under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 24 September 1973, for without authority, failing to go at the time prescribed to his appointed place of duty on or about 24 September 1973. His punishment consisted of reduction to private 2/E-2 (suspended), forfeiture of \$34.28 per month for one month, and extra duty.
5. Before a special court martial on 14 March 1975, the applicant was found guilty of committing an assault consummated by a battery upon Private/E-2 ██████████ by striking her with his hand on or about 2 January 1975. The court sentenced him to forfeit

\$229.00 per month for three months, and confinement at hard labor for three months. The sentence was approved on 4 April 1975.

6. The applicant accepted NJP, under the provisions of Article 15 of the UCMJ on 15 March 1974, for committing assault upon a civilian contract employee by striking her across the buttocks and communicating a threat on or about 12 March 1974. His punishment consisted of reduction to private first class/E-3 and forfeiture of \$85.00 per month for one month.

7. A Report of Mental Status Evaluation, dated 4 April 1975, shows the applicant did not have significant mental illness, was mentally responsible, able to distinguish right from wrong, able to adhere to the right, had the mental capacity to understand and participate in board proceedings and met retention standards.

8. A Statement of Medical Condition dated 29 April 1975, shows there had been no change in the applicant's medical condition since his last separation examination on 3 April 1975.

9. On 29 April 1975, the applicant declined a separate document explaining the narrative reason for his separation from the U.S. Army, a narrative description of the authority for his separation, and the reenlistment code.

10. The applicant's separation packet and separation approval authority memorandum are not available for review.

11. The applicant was discharged on 29 April 1975. His DD Form 214 shows he was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), paragraph 5-13. He was assigned Separation Program Designator JLB [discreditable incidents - civilian or military] with Reenlistment Code 3. His characterization of service was UOTHC. He completed 2 years, 4 months, and 14 days of net active service this period. He lost time from 14 March 1975 through 28 April 1975.

12. On 16 May 1985, the Army Discharge Review Board (ADRB) acknowledged receipt of the applicant's application for review of discharge. The Conversation Record dated 9 July 1985 shows no documentation in file. On 27 September 1985, the ADRB letter shows documents that may be important in the review of his discharge were missing.

13. 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 not 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 noted, the applicant provided insufficient evidence of post-service achievements or character letters of support that could attest to his honorable conduct that might have mitigated the discharge characterization.

2. The Board found insufficient evidence of in-service mitigating factors for the misconduct of assault consummated by a battery upon another Soldier and striking a civilian employee to weigh a clemency determination. The Board determined the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge. Therefore, the Board denied relief.

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.

2/6/2024

X [REDACTED]

CHAIRPERSON
[REDACTED]

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, USC, 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. AR 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 Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Paragraph 5-13, states commanders will not take action prescribed in this chapter in lieu of disciplinary action solely to spare a member who may have committed serious acts of misconduct for which harsher penalties may be imposed under the UCMJ. Separation because of personality disorder is authorized only if the diagnosis concludes

that the disorder is so severe that the member's ability to function effectively. in the military environment is significantly impaired. Characterization of service under honorable conditions may be awarded to a member who has been convicted of an offense by general court-martial or who has been convicted by more than -one-special court-martial in the current enlistment, period of obligated service, or any extension thereof.

3. The Under Secretary of Defense Personnel and Readiness issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//