

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 May 2024

DOCKET NUMBER: AR20230007979

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

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 2-1 (Personnel Qualification Record – Part II), dated 8 June 1984
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 21 May 1985
- Consent for Release of Information and Personal Records, U.S. Congressman, 2nd District, dated 20 April 2023
- Email, Congressional correspondence, dated 26 June 2023

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 AR20200003209 on 10 September 2021.
2. As a new argument, the applicant states, his record shows he went absent without leave, which is not true. He got into a fight at a club. The police were called, and the case was dropped. He served his country for over ten years. It is a great injustice that as a Veteran, he is paying for a minor situation for the rest of his life.
3. The applicant enlisted in the Regular Army on 19 March 1979 for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 19E (Armor Crewman).
4. He reenlisted on 28 September 1981 for a 6-year period. The highest rank he attained was specialist/E-5.
5. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 31 December 1981, for two occasions of willfully disobeying a lawful order from his superior noncommissioned officer (NCO),

on or about 17 December 1981. His punishment consisted of reduction to private first class/E-3, forfeiture of \$150.00 pay, 14 days of extra duty, and 14 days of restriction.

6. On 26 January 1983, the applicant was notified by his immediate commander that his Army Good Conduct Medal for the period 19 March 1979 to 18 March 1982 was disapproved. As reasons for the disapproval, the commander stated, the applicant was found to have drug related paraphernalia in his possession (cigarette rolling papers), and that his chain of command voiced concern over his low job performance and high degree of vocalization. The rating period for the medal was extended until 31 March 1983, or until such time that a negative result on his urinalysis was received.

7. The applicant's immediate commander initiated a DA Form 4126-R (Bar to Reenlistment Certificate) on 31 August 1983. As reasons for the action, the commander noted the applicant received a letter of indebtedness on 19 July 1983; his urinalysis tested positive for tetrahydrocannabinol (THC) on 27 December 1982; he received numerous adverse counseling statements; he received a letter of reprimand on 23 June 1983 for failure to follow direct orders and insubordination; he failed the Basic Noncommissioned Officers Course on 26 July 1983; and he returned 30 hours late from leave on 29 August 1983. The Bar to Reenlistment was approved on 20 September 1983.

8. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ on two occasions:

a. On 19 December 1983, for going from his appointed place of duty without authority, on or about 21 November 1983. His punishment consisted of reduction to specialist/E-4, forfeiture of \$150.00 pay per month for two months, 30 days of extra duty, and 30 days of restriction. His appeal of the punishment was denied on 11 January 1984.

b. On 14 February 1984, for sleeping on his post (Charge of Quarters), on or about 21 January 1984. His punishment consisted of reduction to private first class/E-3 (suspended) and 45 days of extra duty (suspended). On 12 April 1984, the suspension of his punishment was vacated based upon his wrongful use of marijuana, on or about 11 April 1984. The portion of the punishment pertaining to reduction to private first class/E-3 was later set aside due to a lack of sufficient evidence supporting the vacation.

9. On 20 March 1984 and 11 October 1984, the applicant's bar to reenlistment was reviewed and removal was not recommended.

10. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ on 30 January 1985, for being derelict in the performance of his duties, on or

about 19 December 1984. His punishment consisted of forfeiture of \$50.00 pay and extra duty for 7 days.

11. On 9 April 1985, the applicant's bar to reenlistment was reviewed and removal was not recommended.

12. The applicant was reported as AWOL on 9 April 1985. He was apprehended by civil authorities on 15 April 1985 and confined on charges of unlawful use of a weapon, aggravated assault, and sexual battery. The applicant was returned to military control and placed in pre-trial confinement on 25 April 1985.

13. In civil court, the applicant was found guilty of aggravated assault on 1 May 1985. His was sentenced to one year in the Geary County Jail (suspended).

14. The applicant was released from confinement by military authorities on 14 May 1985 after receiving an approved discharge from the separation approval authority.

15. The applicant's service record is void of the complete facts and circumstances surrounding his discharge processing. However, the applicant was discharged on 21 May 1985, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of trial by court-martial. His DD Form 214 confirms his character of service was UOTHC, with separation code KFS and reenlistment code RE-3, 3B, 3C. He was credited with 6 years, 1 month, and 18 days of net active service, with lost time from 9 April 1985 to 23 April 1985. He was awarded or authorized the following:

- Army Service Ribbon
- Overseas Service Ribbon
- NCO Professional Development Ribbon (1)
- Driver-T Badge
- Marksman Marksmanship Qualification Badge with Pistol Bar

16. The ABCMR reviewed the applicant's request for an upgrade of his UOTHC characterization of service, due to disability, on 10 September 2021. The Army Review Boards Agency Medical Advisor reviewed the case and provided an advisory opinion, wherein the Medical Advisor determined there was no evidence the applicant had a mental health condition or medical condition which would have contributed to or would now mitigate the multiple UCMJ violations and civilian criminal activity which resulted in his discharge. After careful consideration, the Board determined the character of service that the applicant received upon separation was not unjust or in error. His request for relief was denied.

17. The applicant provides a copy of his DD Form 214 and DA Form 2-1. He also provides a Consent for Release of Information and Personal Records Form for the U.S. Congressman, 2nd District, dated 20 April 2023, and an email from the office of his Congressman, dated 26 June 2023, showing he sought congressional assistance in submitting his request to the ABCMR.

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

19. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was partially 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.

a. Although the applicant's separation packet is not available for review, his DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10 (in lieu of trial by a court-martial), with an under other than honorable conditions discharge. Administrative separations under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An under other than honorable conditions discharge character of service is normally considered appropriate. The Board found no error or injustice in his separation processing. Also, 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.

b. The Board noted that the applicant's service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:            :            :            GRANT FULL RELIEF

■           ■           ■           GRANT PARTIAL RELIEF

:            :            :            GRANT FORMAL HEARING

:            :            :            DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial amendment of the ABCMR's decision in Docket Number AR20200003209, dated 10 September 2021. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 ending on 21 May 1985, by adding to Remarks Block:

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 790319 UNTIL 810927

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the characterization of his discharge.



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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214 for the period ending 21 May 1985 is missing important entries that may affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 790319 UNTIL 810927

REFERENCES:

1. AR 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 ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.

2. AR 635-5 (Personnel Separations), 15 August 1979, in effect at the time, did not provide for an additional entry for continuous honorable active service when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable. However, an interim change, published on 2 October 1989, does provide for such an entry.

3. AR 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 under other than honorable conditions 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.

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.

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//