

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 February 2024

DOCKET NUMBER: AR20230007982

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

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Character Letters (four)

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 is asking for a discharge upgrade, because the investigation that led to his dismissal was flawed. He was a staff sergeant/E-6 mechanic by trade, and he was found to have tools in his vehicle; however, he had never seen the items before they were added to the list of found items. Two months after his discharge a military vehicle pulled up at his home asking him to come with them. They showed him the evidence locker on his case, there were a lot of items that he had never seen before. He was told that the Criminal Investigation Division (CID) agent was being discharged with a bad conduct discharge. He was recently made aware that this process was available. His DD Form 214 shows 14 years of service, multiple good conduct medals, Army Commendation Medal, Meritorious Service Medal, and the Noncommissioned Officer Professional Development Ribbon.

3. The applicant's complete military records are not available for review; therefore, this case is being considered based on the documents he provides, his DD Form 214 and partial military records.

4. The applicant enlisted in the Regular Army on 26 June 1973 for three years. His military occupational specialty was 63N (Tank Systems Mechanic) and 63T (Bradley Fighting Vehicle Systems Mechanic).
5. He reenlisted on 26 March 1975, 13 November 1979, 12 November 1982, and again on 24 June 1988.
6. Court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) is not available for review.
7. A Record of Trial (partial), dated 26 June 1989, pertaining to the applicant's case shows some property was obtained by Special Agent (SA) G\_\_ on 10 March 1989 at the garage of [the applicant]. Was the evidence illegally obtained? "The M19, your honor" (bottom of page 110). They did not know exactly how much, what property that was, but there was some property apparently obtained (page 111). Further the partial transcript shows the possibility of perjury, conflict of interest in the applicant's representation, and possibly illegally obtained evidence, and obstruction of justice on the part of Mr. G\_\_. The judge ruled against the defense counsel's request to suppress the evidence on the grounds that it was illegally obtained.
8. A Medical Examination for Separation Statement of Option, dated 23 June 1989, shows the applicant did not desire a separation medical examination.
9. The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing.
10. The applicant was discharged on 23 June 1989. His DD Form 214 shows he was discharged 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. He was assigned Separation Code KFS and Reenlistment Code 4. His service was characterized as UOTHC. He completed 14 years, 2 months, and 28 days of net active service. His awards include the: Army Service Ribbon, Overseas Ribbon (2), Army Good Conduct Medal with fourth award, Army Commendation Medal, Noncommissioned Officer Professional Development Ribbon (3), National Defense Service Medal and the Meritorious Service Medal.
11. A characterization of UOTHC is authorized and normally considered appropriate for service members discharged under the provisions of AR 635-200, Chapter 10.
12. The applicant provides:
  - a. A copy of his DD Form 214 discussed above.

b. Character letters that attest to his work ethic, standards, excitement, reliability, he is conscientious and enthusiastic. He is well liked and respected and a veteran who is privileged to share the honor of service to his country with the applicant. He shows good judgment and is levelheaded. He is always willing to dig in and take care of business no matter how messy he would get. He completes tasks and always comes to work on time and got to work with little supervision.

13. A U.S. Army Reserve (USAR) Personnel Center letter, dated 21 October 1991, St. Louis, MO, shows the ABCMR received the applicant's application for correction of military records. The record is void of an ABCMR review.

14. USAR Personnel Center letter, dated 9 December 1992, shows an attached inquiry concerning the applicant's discharge and that the applicant could apply to the Army Discharge Review Board (ADRB) for review of his discharge. The record is void of evidence the applicant applied to the ADRB.

15. 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 to upgrade his character of service to honorable, his supporting documents, his statement, the character statements he provides, the evidence in his service record, and published Department of Defense guidance for consideration of discharge upgrade requests and for liberal consideration of discharge upgrade requests. After carefully considering, the Board determined relief was not warranted.

2. Discharges under the provisions of Army Regulation 635-200, chapter 10, are voluntary requests for discharge in lieu of trial by court-martial. There is no evidence to suggest there was in failure in the requirements of law and regulation regarding meeting or protection of his rights throughout the separation process. Further, his discharge accurately reflects his overall record of service.

3. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination.

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:

1. 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. The Board concurs with making the corrections annotated by the Analyst of Record in Administrative Note(s).

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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.

ADMINISTRATIVE NOTE(S): A review of the applicant's record shows his DD Form 214, for the period ending 23 June 1989, is missing important entries that affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entries in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE ACTIVE SERVICE FROM 750326 UNTIL 880623

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 currently in effect, sets forth the basic authority for the separation of enlisted personnel, provides 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 of the version in effect at the time provided that a member who 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 at any time after court-martial charges were preferred. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses charged, type of discharge normally given under the provisions of this chapter, the loss of Veterans Administration benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. An Undesirable Discharge Certificate would normally be furnished an individual who was discharged for the good of the Service.

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//