

IN THE CASE OF: ██████████

BOARD DATE: 7 February 2024

DOCKET NUMBER: AR20230008006

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

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

DD Form 149 (Application for Correction of Military Record)

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 was advised by his company commander and platoon leader to go absent without leave (AWOL) for 30 days. Then turn himself in to Fort drum, NY, to avoid 30 days at a correctional confinement facility and discharge under court martial for insubordination and returning late from leave by one day. There was a personal conflict with his platoon sergeant at the time over a girl. He was 22 years old and had no adult in his life to advise him otherwise. This has been weighing on him every day since his separation, it is strictly a personal pride issue. He wants nor needs any Veterans Administration benefits. He just wants to be proud of his service and excellent record up to the ill-advised decision to follow his commanding officer's poor advice.
3. The applicant enlisted in the Regular Army on 9 July 1984 for three years. His military occupational specialty was 64C (Motor Transport Operator).
4. The applicant was AWOL on 26 October 1985. He turned himself in and was present for duty (PDY) on 29 October 1985.
5. The applicant was AWOL on 30 July 1986. He turned himself in, to the first sergeant, and was PDY on 4 August 1986.

6. The applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on 14 August 1986, for AWOL on or about 30 July 1986 until on or about 4 August 1986. His punishment consisted of reduction to private first class/E-3, confinement for 7 days, and forfeiture of \$183.00 for one month.
7. He was AWOL on 19 August 1986 and dropped from the rolls on 18 September 1986.
8. Court-martial charges were preferred against the applicant on 18 September 1986 for violations of the UCMJ. His DA Form 458 (Charge Sheet) shows he was charged with AWOL from on or about 19 August 1986.
9. The applicant surrendered to military authorities at Fort Drum on 29 September 1986.
10. On 1 October 1986, the applicant did not desire a separation medical examination.
11. A Personnel Control Facility Interview Sheet, dated 2 October 1986, shows the applicant went AWOL. He requested chapter under failure to adapt on several occasions, all were turned down. His mother suffered from colitis and missed a lot of work. Therefore, he must return to help her. The action he took before going AWOL was, he went through his chain of command up to the company commander.
12. An updated charge sheet shows court-martial charges were preferred against the applicant on 18 September 1986 for being AWOL from on or about 19 August 1986 until on or about 29 September 1986.
13. The applicant consulted with legal counsel on 3 October 1986 and was advised of the basis for the contemplated trial by court-martial for an offense punishable by a bad conduct discharge or a dishonorable discharge, the maximum permissible punishment authorized under the UCMJ, the possible effects of a request for discharge, and of the procedures and rights available to him.
 - a. Subsequent to consultation with legal counsel, he requested discharge under the provisions of Army Regulation 635-200 (AR) (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 indicated he was making the request of his own free will and he had not been subjected to any coercion whatsoever by any person. He understood by requesting discharge he was admitting guilt to the charges against him or of a lesser included offense that also authorized the imposition of a bad conduct discharge or a dishonorable discharge.

b. He acknowledged he understood if his discharge request was approved, he could be deprived of many or all Army benefits and he could be ineligible for many, or all benefits administered by the Veterans Administration; he acknowledged he could be deprived of his rights and benefits as a veteran under both Federal and State laws if he was given an UOTHC discharge.

c. He did not elect to submit statements in his own behalf.

14. The applicant's commander recommended approval on 20 October 1986 and in his opinion the applicant had no motivation for continued service and would not respond to either counseling or rehabilitation.

15. The separation authority approved the applicant's request for discharge on 17 December 1986, and directed the applicant be reduced to the lowest enlisted grade and that he be furnished a DD Form 794A (UOTHC Discharge Certificate).

16. The applicant was discharged on 15 January 1987. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, Chapter 10, for the good of the service-in lieu of court martial. He was assigned Separation Code KFS and Reenlistment Code 3, 3B, and 3C. His service was characterized as UOTHC. He completed 2 years, 4 months, and 19 days of net active service. He lost time from 26 October 1985 to 28 October 1985, 30 July 1986 to 3 August 1986 and 19 August 1986 to 28 September 1986. His awards include the Army Service Ribbon and the Parachutist Badge.

17. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

18. 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 there is insufficient

evidence of mitigating factors to overcome the misconduct of numerous periods of AWOL. The Board noted the applicant provided no post service achievements or character letters of support attesting to his honorable conduct that might mitigate the applicant's characterization of service discharge.

2. Furthermore, 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 to an honorable 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.

2/22/2024

X [Redacted Signature]

CHAIRPERSON

[Redacted Title]

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 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. The Under Secretary of Defense for 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//