

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 8 March 2024

DOCKET NUMBER: AR20230008086

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) discharge to honorable.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

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

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 Dockets Number AR20110012999 on 15 December 2011 and in Docket Number AR20160001247 on 1 June 2017.

2. The applicant states, in effect, he was never informed about the paperwork he could have signed to receive an upgrade of his discharge 6 months after his separation. As time passed, the paperwork required for this action changed. He kept calling the Department of Veterans Affairs for assistance and continued getting the runaround about how to handle this situation. He also contends that Block 29 (Dates of Time Lost During This Period) of his DD Form 214 shows 60 days were deducted from his net active service.

3. The applicant's complete military service record is not available for review. This case is being considered based upon documents in the available record and those provided by the applicant.

4. The applicant enlisted in the Regular Army on 20 May 1976 in the rank/pay grade of private (PV1)/E-1. Upon completion of initial entry training, he was awarded military occupational specialty 11M (Fighting Vehicle Infantryman).

5. Court-martial charges were preferred against the applicant. The relevant DD Form 458 (Charge Sheet) and his subsequent voluntary request for administrative discharge under the provisions of Army Regulation 635-200 (Personnel Separations -

Enlisted Personnel), Chapter 10, for the good of the service - in lieu of trial by court-martial are not available for review. However, the previous ABCMR Record of Proceedings provides the following information:

a. The highest rank/pay grade he attained while serving on active duty was private first class/E-3.

b. On 16 September 1992, court-martial charges were preferred against the applicant for being absent without leave (AWOL) from 14 August 1992 to on or about 14 October 1992.

c. On 27 October 1992, after consulting with counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service - in lieu of court-martial. In his request for discharge he indicated he was making the request of his own free will without coercion from anyone and that he was aware of the implications attached to his request. He also admitted that he was guilty of the charges against him or of lesser included offenses which authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged that he understood he could receive a UOTHC discharge, that he might be deprived of many or all benefits, and that he might be ineligible for many, or all benefits administered by the Department of Veterans Affairs as a result of such a discharge. He also elected not to submit a statement in his own behalf. In addition, the applicant was advised he may expect to encounter substantial prejudice in civilian life if he was issued a UOTHC discharge.

d. The Commanding General approved the applicant's request for discharge under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service - in lieu of court-martial with an UOTHC discharge.

6. The applicant's DD Form 214 shows he was discharged in the rank/grade of PV1/E-1 on 24 November 1992, for the good of the service-in lieu of court-martial, under the provisions of Army Regulation 635-200, Chapter 10. His service was characterized as UOTHC. He was issued separation code "KFS" and reenlistment code "RE-3." He was credited with completion of 1 year, 10 months, and 18 days of active service. He had time lost due to his period of AWOL from 14 August 1992 to 14 October 1992.

7. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. In doing so, he would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

8. The applicant petitioned the ABCMR for relief. On 22 December 2011, the applicant was informed the Board had considered his application under procedures established by the Secretary of the Army and had denied his request for relief.

9. The applicant petitioned the ABCMR for relief again. On 9 June 2017, his case was reconsidered by the Board and denied.

10. There is not now nor has there ever been any provision in law or regulation that allowed for automatic upgrade of any less than honorable discharge based solely on a period of lapsed time. This myth is based on prior regulations that precluded an applicant from applying for a discharge review for a given period post discharge.

11. 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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

2. The Board noted the applicant's specific contention that he thought his discharge could be upgraded after 6 months; however, based on a preponderance of the evidence, the Board determined the characterization of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 to amend the decision of the ABCMR set forth in Docket Numbers AR20110012999 on 15 December 2011 and in Docket Number AR20160001247 on 1 June 2017.

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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. 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. The regulation provides that 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. It is not an investigative body.

2. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Service 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//