

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 February 2024

DOCKET NUMBER: AR20230008281

APPLICANT REQUESTS: in effect:

- reconsideration of his request for an upgrade of his Under Other than Honorable Conditions (UOTHC) characterization of service
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his periods of honorable service
- to appear in person before the Board via video/telephone

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 256A (Honorable Discharge Certificate) (3)
- DD Form 214

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 AR20100020865 on 8 March 2011.
2. The applicant states he was in the Army from 4 June 2000 until 28 May 2008. He was honorably discharged on 7 July 2003, 15 December 2005, and 22 August 2007. However, his DD Form 214 incorrectly groups all of his time as under other than honorable conditions.
3. On 5 June 2000, the applicant enlisted in the Regular Army for a period of 4 years. Upon completion of initial entry training, he was assigned to a unit at Fort Meade, MD and was subsequently reassigned to a unit in Korea.
4. Permanent orders show the applicant was awarded the Army Good Conduct Medal (AGCM) for exemplary behavior, efficiency, and fidelity in active federal military service from 5 June 2000 through 4 June 2003.

5. On 8 July 2003, he reenlisted for a period of 3 years.
6. The applicant was advanced to the rank/grade of staff sergeant (SSG)/E-6 effective 1 October 2004 and was subsequently reassigned to a unit at Fort Huachuca, AZ.
7. On 16 December 2005, he reenlisted for a period of 3 years.
8. Permanent orders show he was awarded a second AGCM for the period from 5 June 2003 to 4 June 2006.
9. A DD Form 458 (Charge Sheet) shows on 26 February 2008, court-martial charges were preferred against the applicant for two specifications of violation of Article 107, for making a false official statement and with intent to deceive signing an official document; and two specifications of violating Article 121 of the Uniform Code of Military Justice (UCMJ), for stealing money in a value of more than \$500.00.
10. On 4 April 2008, after consulting with counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, in lieu of trial by court-martial. He consulted with legal counsel and was advised of the basis for the trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him. He elected to submit statements in his own behalf; however, a statement is not available for review.
11. The applicant's immediate commander recommended approval of his request with a discharge Under Honorable Conditions (General) based upon his complete service record. The Garrison Commander recommended approval of his request with a discharge UOTHC.
12. On 10 April 2008, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial, with his service characterized as UOTHC. He further directed the applicant be reduced to the lowest enlisted grade.
13. Orders and the applicant's DD Form 214 show he was discharged on 25 April 2008, in the rank/grade of private/E-1, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "In Lieu of Trial by Court-Martial" with Separation Code "KFS" and Reentry Code "4." His service was characterized as UOTHC. He was credited with completing 7 years, 10 months, and 14 days of net active service this period. He had no lost time.
14. Block 18 (Remarks) contains no entry regarding the applicant's periods of honorable service [see Administrative Notes below].

15. 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.

16. The applicant provides three DD Forms 256A which show he was honorably discharged on 7 July 2003, 15 December 2005, and 22 August 2007.

17. The applicant petitioned the Army Discharge Review Board (ADRB) for relief on 28 May 2008. On 27 October 2008, the applicant was informed that after careful review of his application, military records, and all other available evidence, the ADRB determined that he was properly and equitably discharged and denied his petition.

18. The applicant petitioned the ABCMR on 4 August 2010 for upgrade of his discharge. On 10 March 2011, he was informed the ABCMR had considered his application under procedures established by the Secretary of the Army and denied his request for relief.

19. 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. By regulation, an applicant is not entitled to a hearing before the Board. Hearings may be authorized by a panel of the Board or by the Director of the ABCMR.

#### BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. 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. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

2. The Board concurred with the corrections described in Administrative Note(s) below.

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 decision of the ABCMR set forth in Docket Number AR20100020865 on 8 March 2011. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending his DD Form 214 as shown in Administrative Note(s) below.

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 applicant's character of service.

5/6/2024

X

CHAIRPERSON

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):

Army Regulation 635-8 (Separation Processing and Documents), currently in effect, states for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter "CONTINUOUS HONORABLE SERVICE FROM (first day of service for which DD Form 214 was not issued) UNTIL (date before commencement of current enlistment)." Then, enter the specific periods of reenlistment as prescribed above. 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 SERVICE FROM 20000605 UNTIL 20070822

REFERENCES:

1. Title 10, U.S. Code (USC), Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. 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. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
4. 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.

5. 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//