

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 March 2024

DOCKET NUMBER: AR20230008282

APPLICANT REQUESTS: upgrade of his under other than honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Email exchange with the applicant's spouse
- Image of a signature

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 completed 4 years, and he believes his status should be upgraded. He did serve his country and should be able to get some assistance. He is homeless with a wife and two children, 7 and 9 years old respectively. His brother in law told him he knows some people who served less that the applicant did, and still got benefits. His family is struggling, and they need help.
3. Review of the applicant's service records shows:
 - a. He enlisted in the Regular Army for 4 years on 29 April 1986. He completed training and was awarded military occupational specialty 19E, Armor Crewmember.
 - b. While still in training at Fort Knox, KY he accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on/for
 - (1) 5 June 1986, for disobeying an order from a noncommissioned officer related to the disassembly of a weapon system.

(2) 23 June 1986, for disobeying an order from a noncommissioned officer related to preparation of his wall locker for inspection.

c. After completing training, he was assigned to Fort Benning, GA, where he also accepted NJP under Article 15 of the UCMJ, on 6 March 1987 for: failing to go at the time prescribed to his appointed place of duty and twice disobeying an order from his first sergeant to go to his office.

d. On 20 January 1989, he was reported in an absent without leave (AWOL) status, and on 19 February 1989, he was dropped from the Army rolls as a deserter. He was apprehended by civil authorities in Slidell, LA on 11 February 2004, and he was transferred to military control at Fort Knox, KY.

e. On 19 February 2004, court-martial charges were preferred against the applicant. The relevant DD Form 458 (Charge Sheet) shows he was charged with one specification of AWOL from 20 January 1989 to 11 February 2004.

f. On 20 February 2004, the applicant consulted with counsel and was advised of the contemplated trial by court-martial for an offense (extensive AWOL) punishable by a bad conduct or a dishonorable discharge. Following this consult, the applicant voluntarily requested discharge for the good of the service, in lieu of trial by court-martial, under the provisions (UP) of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. He acknowledged the following:

(1) He was making this request of his own free will and have not been subjected to any coercion whatsoever by any person; he has been advised of the implications that are attached to it.

(2) He understood that as a result of his request he could be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate.

(3) He understood that, if my request for discharge is accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Discharge Certificate.

(4) He unacknowledged he had been advised and understood the possible effects of an Under Other Than Honorable Discharge and that, as a result of the issuance of such a discharge, he would be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered by the Veterans Administration, and that he may be deprived of his rights and benefits as a veteran under both Federal and State law. He also understood that he may expect to encounter

substantial prejudice in civilian life because of an Under Other Than Honorable Discharge.

(5) He elected not to submit a statement.

g. On 24 May 1991, following a legal review for legal sufficiency, the separation authority approved the applicant's request for discharge and ordered hm discharge under other than honorable conditions s and reduced to the grade of private/E-1.

h. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged from active duty on 9 July 2004 under the provisions of AR 635-200, chapter 10 (in lieu of trial by a court-martial) in the rank of private/E-1, with an under other than honorable conditions characterization of service (Separation Code KFS and Reentry Code 4). He completed 2 years, 11 months, and 1 day of active service (not 4 years as he stated). He also had 5,500 days of lost time from 20 January 1989 to 10 February 2004) and 141 days of excess leave (20 February to 9 July 2004).

i. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

4. By regulation, AR 635-200 sets forth the basic authority for the separation of enlisted personnel. 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.

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 determined there is insufficient evidence of in-service mitigating factors to over the misconduct of being AWOL for 15 years and 23 days.

2. The applicant provided no post service achievements or character letters of support attesting to his honorable conduct for the Board to weigh a clemency determination. Furthermore, the Board agreed 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. 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.

<p>X [REDACTED]</p> <hr/> <p>CHAIRPERSON</p> <p>[REDACTED]</p>

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, U.S. Code, 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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides 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.

a. Paragraph 3-7a states that 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. Paragraph 3-7b states that 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.

3. 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/NRs) 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. 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 based on 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. 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//