

IN THE CASE OF: ██████████

BOARD DATE: 14 March 2024

DOCKET NUMBER: AR20230008364

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge.

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

DD Form 293 (Application for the Review of Discharge)

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 did not provide a statement in his own behalf.
3. On 23 March 1976, the applicant enlisted in the Regular Army. Upon completion of training, he was awarded military occupational specialty 91B (Medical Specialist). The highest grade he attained was E-2.
4. On 22 September 1976, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for absenting himself from his place of duty, on or about 2 September 1976; and failing to go to his appointed place of duty, on or about 3 September 1976. His punishment included forfeiture of \$50.00 for one month, and five days extra duty.
5. On 10 January 1977, the applicant was arrested by the ██████████ Police, ██████, and placed in the county jail until 24 January 1977. The applicant's record is void of documents containing the specific facts and circumstances surrounding his arrest.
6. On 24 March 1977, the applicant accepted NJP under Article 15 of the UCMJ, for disobeying a lawful order from his superior officer, on or about 20 March 1977. His punishment included reduction to E-1, forfeiture of \$75.00, and 14 days extra duty.

7. On 24 March 1977, the applicant was hospitalized in Ireland Army Hospital, Fort Knox, KY, until 4 April 1977. The applicant's record is void of documents containing the specific facts and circumstances surrounding his illness and subsequent hospitalization.
8. On 18 April 1977, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
9. The applicant's commander notified the applicant on 18 April 1977, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13, for misconduct.
10. The applicant acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him. He acknowledged he understood that, as the result of issuance of an undesirable discharge, he may be ineligible for many or all benefits as a Veteran under both Federal and State laws. He declined to submit a statement in his own behalf.
11. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 13. As the specific reasons, his commander noted the applicant had been arrested twice for bad checks, he served 14 days civil confinement on one charge, and was on a two year probation for the other. He showed a chronic pattern of tardiness, failure to repair and had been absent without leave from the duty section. Additionally, the applicant showed an overall inability to adequately function within the military, he was unwilling to accept responsibility for his actions and unresponsive to constant counseling by superiors and his commander.
12. Consistent with the chain of command recommendations, the separation authority approved the recommended discharge on 4 May 1977, under the provisions of Army Regulation 635-200, paragraph 13-4 and 13-5a(1). He further directed the issuance of a DD Form 794A (UOTHC Discharge Certificate).
13. The applicant was discharged accordingly on 11 May 1977. His DD Form 214 (Report of Separation from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 13-5a(1), for misconduct - frequent incidents of a discreditable nature with authorities. His service was characterized as UOTHC. He completed 1 year, 1 month, and 5 days of net active service this period with 14 days of lost time.

14. In reaching its determination, the Board can consider the applicant's petition, his arguments and assertions, and his service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's 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.

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.

6/25/2024



 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.

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 sets forth the requirements for the administrative 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 13 provided procedures and guidance for eliminating personnel found to be unfit or unsuitable for further military service. Action will be taken to separate an individual for unfitness when it is clearly established that despite attempts to rehabilitate or develop him as a satisfactory Soldier, further effort is unlikely to succeed. Action will be taken to separate an individual for unsuitability when it is clearly established that it is

unlikely that he will develop sufficiently to participate in further military training and/or become a satisfactory Soldier.

3. 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) 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//