

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 March 2024

DOCKET NUMBER: AR20230008604

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

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 (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 didn't spend enough time in to finish advanced individual training or get a military occupational specialty. He had problems on the home front he had to take care of. He is seeking an upgrade to open more opportunities to change his life.
3. The applicant enlisted in the Regular Army on 15 September 1975 for 4 years.
4. His duty status was changed from ordinary leave to absent without leave (AWOL) on 9 January 1976, and dropped from the rolls (DFR) on 7 February 1976.
5. Court-martial charges were preferred against the applicant on 9 February 1976 for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with AWOL from on or about 9 January 1976 until on or about 7 February 1976.
6. The applicant telephonically contacted the Federal Bureau of Investigation and voluntarily surrendered on 1 April 1976. His duty status was changed from DFR to returned to military control. He was present for duty (PDY) on 8 April 1976.

7. The applicant accepted nonjudicial punishment under Article 15 of the UCMJ on 22 April 1976 for being AWOL on or about 9 January 1976 until on or about 31 March 1976. His punishment consisted of reduction to private/E-1, forfeit \$84.00, extra duty and restriction.
8. His duty status was changed from assigned-not joined to AWOL on 8 May 1976. He failed to report on the prescribed reporting date, and was DFR on 7 June 1976.
9. The applicant's duty status was changed from DFR to returned to military control effective 14 July 1976, when he surrendered to civil authorities. He was PDY on 22 July 1976.
10. A Report of Mental status Evaluation, dated 28 July 1976, shows the applicant had no significant mental illness, was mentally responsible, able to distinguish right from wrong, able to adhere to the right, had the mental capacity to understand and participate in board proceedings and met retention standards.
11. The applicant consulted with legal counsel on 18 August 1976 and was advised of the basis for the contemplated 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.
 - a. After consulting with legal counsel, he voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10, for the good of the service, in lieu of trial by court-martial. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life because of an UOTHC discharge.
 - b. He elected to submit a statement in his own behalf, wherein he stated he completed basic training, they had Christmas leave and he went. While on leave he decided he wasn't having too good of a time in the Army, so he stayed out and then turned himself in. He was again granted leave before going to training and he stayed on leave. The reason he wanted out of the Army was because he had two Article 15's for going AWOL and he did not think that was good. He would rather be out so he could go to college full time.
12. The applicant was AWOL and DFR on 22 August 1976.

13. Court-martial charges were preferred against the applicant on 23 August 1976 for violations of the UCMJ. His DD Form 458 shows he was charged with AWOL from on or about 8 May 1976 until on or about 13 July 1976.

14. The applicant's commander recommended approval of his request for discharge for the good of the service, in lieu of trial by court-martial on 23 August 1976. He further recommended the issuance of an Undesirable Discharge Certificate. His chain of command and the Staff Judge Advocate recommended approval.

15. The applicant was apprehended by military authorities on 13 September 1976 and transported to the unit on 16 September 1976. He was confined by military authorities on 17 September 1976 pending disposition of charges.

16. The separation authority's approval memorandum is not available for review.

17. The applicant was discharged on 28 September 1976. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of AR 635-200, Chapter 10, with Separation Program Designator JFS [for the good of the service, in lieu of trial by court-martial] and Reenlistment Code 4. His service was characterized as UOTHC. He completed 7 months and 16 days of net active service. He had 150 days of lost time.

18. 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.

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

BOARD DISCUSSION:

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. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his

separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that 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.

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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. 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 (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//