

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 March 2024

DOCKET NUMBER: AR20230008608

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to under honorable conditions (general).

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

- DD Form 149 (Application for Correction of Military Record), 30 March 2023
- self-authored statement
- certificate of completion, August 1981
- associate degree in applied science, 16 May 1987
- registered nurse license, 29 March 1988
- character reference, from S.H., 24 April 2023

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, in effect, his discharge should be changed due to his first enlistment being honorable. He did not have any disciplinary actions prior to his hardship and references his evaluations as being above average or better. He tried to get out of the Army the right way, by applying for a hardship discharge, which was denied. He was told if he signed his paperwork he could leave and support his hometown crisis. He did not know nor expect an under other than honorable conditions discharge and knows he served his country well and is requesting a discharge to reflect his honorable service.
3. The applicant enlisted in the Regular Army on 29 April 1972, for a 3-year period. He was awarded military occupational specialty 63C (Track Vehicle Mechanic). He was honorably discharged on 17 December 1974, for immediate reenlistment. He served 2 years, 7 months, and 28 days of net active service with 10 months and 24 days of foreign service. He was awarded the National Defense Service Medal and the Armed Forces Expeditionary Medal - Korea.

4. He reenlisted on 18 December 1974, for an additional 4-year period.
5. A DA Form 4384-R (Commander's Report of Inquiry/Unauthorized Absence) shows on 20 September 1976 the applicant went absent without leave (AWOL). The possible contributing factors are noted as marital strife, the applicant's wife was pressuring him to get out of service and he recently had a hardship discharge disapproved.
6. A DA Form 3836 (Notice of Return of US Army Member from Unauthorized Absence) states the applicant was dropped from rolls on 19 October 1976, he was apprehended by the Federal Bureau of Investigation on 2 August 1977.
7. A memorandum from the applicant's commander shows the applicant was being recommended for a trial by special court-martial.
8. The applicant consulted with legal counsel on 12 August 1977. After consulting with counsel, the applicant executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service in Lieu of Trial by Court-Martial). He acknowledged his understanding of the following in his request:
 - a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.
 - b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the Uniform Code of Military Justice, of the possible effects of an under other than honorable conditions character of service, and of the procedures and rights available to him.
 - c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected not to submit a statement in his own behalf.
9. On 17 August 1977, the applicant's immediate commander recommended approval of the applicant's request for discharge for the good of the service. The commander stated the applicant was AWOL for 316 days due to his personal problems. The commander recommended the applicant receive a UOTHC discharge.

10. The separation authority approved the applicant's request for discharge on 29 August 1977, for the good of the service. He directed the applicant be reduced to the lowest enlisted grade and the issuance of a DD Form 794A (UOTHC Discharge Certificate).

11. The applicant was discharged accordingly on 29 August 1977, under the provisions of AR 635-200, Chapter 10. His DD Form 214 (Report of Separation from Active Duty) confirms his service was characterized as UOTHC, with separation program designator code JFS and reenlistment code RE-3B. He was credited with 1 year and 10 months of net active service this period, with 4 years, 5 months, and 28 days of total service. He additionally had 316 days of time lost. He was awarded or authorized: National Defense Service Medal and Expert Marksmanship Badge with Rifle Bar.

12. The applicant provides an operating room technician certificate of completion, his associate degree in applied science, and his registered nurse certificate. Additionally, a character reference was submitted on the applicant's behalf stating, in effect, he is a diligent health care provider who constantly gives his patients a superior level of medical care. He has managed complex medical conditions and critically ill patients with competence and intelligence. He works hard, conducts himself well, has pride in his work, and is an honorable person with a strong sense of duty and integrity.

13. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC characterization of service is normally considered appropriate.

14. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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.

a. The applicant was charged with commission of an offense 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.

b. The Board noted that the applicant's first term of service was honorable, and he completed a total of 4 years, 5 months, and 28 days of total service. Additionally, he provides several documents in support of a clemency determination. He provides an operating room technician certificate of completion, associate degree in applied science, and a registered nurse certificate. He also provides a character reference letter speaking of his hard work and strong sense of duty and integrity.

c. The Board determined the applicant's service clearly did not rise to the level required for an honorable discharge (given his extensive AWOL); however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further unanimously determined no change to the reason for separation and/or associated Separation/RE codes is warranted as the underlying reason for separation remains the same.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 29 August 1977 to show:

- Character of Service: General, Under Honorable Conditions
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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

a. 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. 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.

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.

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/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, 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//