

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 March 2024

DOCKET NUMBER: AR20230008615

APPLICANT REQUESTS: Reconsideration of his request for 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 or Dismissal from the Armed Forces of the U.S.)
- Self-authored letter
- DD Form 214 (Report of Separation from Active Duty)
- Letter of appreciation
- Civilian certificates of training
- Various civilian identifications and documents

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 AC87-07224 on 17 August 1988.

2. The applicant states:

a. Directly out of high school at the age of 17, he enlisted in the Army. His tour of duty was overseas in Germany, working as a Postal Clerk. While his experiences in the foreign country were different, his initial experience in the military was good. Prejudices, discrimination, racial harassments, depression, sadness, feelings of isolation and sleepless nights were oftentimes so overwhelming. It was several months before he developed special relationships with fellow servicemen that helped him make a positive adjustment to his military life.

b. While it was an honor to serve his country, his discharge was inequitable because it was based on isolated incidents that resulted in no other adverse actions only the prejudicial decision of his commander. He felt he was not given a fair and equitable chance and he felt as though he was given no choice or option, and was forced into a decision that has haunted him all his life. He learned from the experience

and did not allow them to deter him from becoming a positive contributor to society. He currently works for Homeland Security/U.S. Customs and Border Protection and is a member of the Coast Guard Auxiliary.

3. On 30 August 1974, the applicant enlisted in the Regular Army for 2 years. Upon completion of training, he was awarded military occupational specialty 71F (Postal Operator Specialist). The highest grade he attained was E-3.
4. On 4 February 1975, the applicant departed for service in Germany.
5. On 6 June 1975, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ), for wrongfully having in his possession and using and undetermined amount of marijuana, on or about 13 May 1975. His punishment included an oral reprimand, reduction to E-1, and 14 days extra duty.
6. Court-martial charges were preferred against the applicant for violations of the UCMJ; however, the relevant DD Form 458 (Charge Sheet) is not available for review.
7. On 29 October 1975, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.
8. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.
9. The applicant was discharged on 19 January 1976. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of trial by court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Code KFS and Reentry Codes 3, and 3C. He completed 1 year, 4 months, and 20 days of net active service this period.
10. The applicant petitioned the Army Discharge Review Board requesting upgrade of his UOTHC discharge. On 9 December 1977, the Board voted to deny relief and determined the applicant's service was characterized properly at the time of discharge.
11. The applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 17 August 1988, the Board voted to deny relief and determined the applicant had not presented and the records did not contain sufficient justification to conclude that it would be in the interest of justice to excuse the failure to file within the time prescribed by law.
12. The applicant provides the following (provided in entirety for the Board):

a. Letter of appreciation from the U.S. Customs and Border Protection Division for his outstanding support and cooperation.

b. Various documents and digital images that detail his post-service professional and educational accomplishments.

c. Digital images of his Homeland Security/U.S. Customs and Border Protection badge and U.S. Coast Guard Auxiliary membership identification card.

13. The issuance of a discharge under the provisions of Army Regulation 635-200, Chapter 10, required the applicant to have requested from the Army – voluntarily, willingly, and in writing – discharge in lieu of trial by court-martial. It is presumed that all requirements of law and regulation were met, and the rights of the applicant were fully protected throughout the separation process.

14. 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.

#### 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 overcome the misconduct of AWOL and drug use for the Board to weigh a clemency determination. The Board agreed the applicant's record is absent some of the facts and circumstances regarding his separation.

2. The applicant accepts responsibility for his actions and was remorseful with his application, demonstrating he understands his actions were not that of all Soldiers. The Board found the applicant's post service achievements and character letters of support attesting to his honorable character extremely noteworthy. The Board determined that the character of service the applicant received upon separation was not in error or unjust. The Board agreed reversal of the previous Board determination is without merit and 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 Board found 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 to amend the decision of the ABCMR set forth in Docket Number AC87-07224 on 17 August 1988.



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. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.
2. Army Regulation 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. 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.

//NOTHING FOLLOWS//