

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 March 2024

DOCKET NUMBER: AR20230008771

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

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

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 does not provide a statement in support of his request.
3. The applicant enlisted in the Army National Guard of the United States (ARNGUS) on 16 December 1973 for a 3-year period. As part of his enlistment, the applicant acknowledged understanding his enlistment obligations, satisfactory participation requirements, and enforcement provisions.
4. Special Orders Number 6, State of Wisconsin, Department of Military Affairs, dated 9 January 1974, ordered the applicant to active duty for training (ADT), for the completion of his initial entry training.
5. Special Orders Number 134, Headquarters, U.S. Army Training Center, Fort Ord, CA, dated 14 May 1974, and a DD Form 214 (Report of Separation from Active Duty) show he was honorably relieved from ADT and reassigned to the 428th Support and Service Company, Quartermaster Corps, U.S. Army Reserve, with military occupational specialty 94B (Food Service Specialist), on 26 May 1974.

6. Two Unauthorized Absence (UA) letters, dated 31 October 1974 and 3 December 1974, from the Commander, Service Battery, 1-126 Field Artillery, indicate the applicant was absent without authority on the following dates:

- 28 – 29 September 1974
- 19 – 20 October 1974
- 16 – 17 November 1974
- 20 November 1974

7. A letter from the State of Wisconsin, Department of Military Affairs, dated 17 December 1974, shows the Adjutant General of the Wisconsin Army National Guard requested active duty orders be issued for the applicant as he had failed to fulfill his satisfactory participation requirements.

8. The applicant was notified on 17 December 1974 that action was being taken to order him to active duty under the provisions of Army Regulation 135-91 (Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Provisions).

9. Special Orders Number 58, State of Wisconsin, Department of Military Affairs, dated 24 March 1975, and National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service in the Army National Guard) show the applicant was discharged from the ARNGUS on 7 April 1975, with an under honorable conditions (general) characterization of service. He was subsequently ordered to active duty, with a report date of 8 April 1975, later amended to 9 June 1975. The applicant was sent a copy of these orders by certified mail.

10. A letter, dated 5 June 1975, shows the applicant was seen by Dr. C.A.S., on 5 April 1975 for a back problem. He underwent a laminectomy on 17 April 1975 and was released from the hospital on 27 April 1975. The physician stated, [the applicant] was making satisfactory improvement towards recovery but was still disabled and should be markedly restricted in his activity.

11. The applicant underwent a medical examination on 16 December 1975. The relevant Standard Form (SF) 93 (Report of Medical History) and corresponding SF 88 (Report of Medical Examination), shows the applicant reported being in good health with recurrent back pain. He was deemed physically qualified for separation.

12. The applicant's service record is void of the complete facts and circumstances surrounding his discharge. However, a DD Form 214 shows the applicant was discharged on 30 December 1975, under the provisions of Army Regulation 635-200 (Personnel Separation – Enlisted Personnel), Chapter 10, in lieu of trial by court-martial,

with separation code KFS and reenlistment code RE-4. His character of service was UOTHC. He was credited with 23 days of net active service this period.

13. Administrative separations under the provisions of Army Regulation 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 character of service is normally considered appropriate.

14. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination 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 being DFR. Evidence in the record show the applicant received unsatisfactory performance while assigned to the WIARNG.

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

[REDACTED]

[REDACTED]

[REDACTED]

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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides the ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.
3. Army Regulation 135-91, defines Army National Guard and U.S. Army Reserve service obligations, and prescribes policies and procedures governing methods of fulfillment, satisfactory participation, and enforcement.
4. Army Regulation 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.

5. 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.

//NOTHING FOLLOWS//