

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 February 2024

DOCKET NUMBER: AR20230008826

APPLICANT REQUESTS: in effect, an upgrade of his under other than honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 22 October 1982
- Certificate, Certified Fire Fighter – Level One
- Certificate, Triage and Mass Casualty Scene Management Course
- Certificate of Recognition
- Certificate, Scoutmastership Fundamentals
- Assistant Scoutmaster Commendation
- Certificate, Conductor Class 119
- Certificate, Locomotive Engineer Class 112
- Resume

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, he requests to have his other than honorable discharge upgraded to honorable, so he can utilize Department of Veterans Affairs (VA) benefits.
 - a. He additionally states that he went absent without leave (AWOL), went to jail, became heavily involved with alcohol, and went AWOL again which led to his discharge from service.
 - b. He has been married for 47 years, with 3 children, 14 grandchildren and has lived a productive life with the help of his sorority [sic] since his time in service.

c. He has volunteered as a scoutmaster, fireman, worked as an emergency medical technician (EMT), and served as a drug and alcohol liaison for Union Pacific Railroad.

3. The applicant provides:

a. Five certificates of completion for various courses to include:

- Certified Fire Fighter – Level One
- Triage and Mass Casualty Scene Management Course
- Scoutmastership Fundamentals
- Conductor Class 119
- Locomotive Engineer Class 112

b. A certificate of recognition from Central New Hampshire Emergency Medical Services District C-4 for participation in a Defibrillation Save.

c. A commendation certificate from the Boy Scouts of America for his contribution to the success of Troop 217 by serving as the Assistant Scoutmaster.

d. A resume that outlines his work history from 1984 until 1995.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 28 December 1978.

b. On 27 August 1982, charges were preferred on the applicant for violating Article 86, by absenting himself from his unit from on or about 5 July 1982 to on or about 26 August 1982.

c. The applicant consulted with legal counsel on 27 August 1982. He was advised of the basis for the contemplated trial by court-martial for an offense punishable by a bad conduct discharge or a dishonorable discharge, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a request for discharge, and of the procedures and rights that were available to him. Following consultation with legal counsel, he requested discharge under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In his request for discharge he indicated that:

- he was making this request of his own free will and had not been subjected to any coercion by any person
- he understood that by requesting discharge he was admitting guilt to the charges against him or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge

- he acknowledged he understood that if the discharge request was approved, he could be deprived of many or all Army benefits, that he could be ineligible for many or all benefits administered by the VA, and that he could be deprived of his rights and benefits as a veteran under both Federal and State law
- he also acknowledged that he might expect to encounter substantial prejudice in civilian life by reason of an under other than honorable discharge
- he did not elect to submit a statement in his own behalf

d. On 2 September 1982, his chain of command forwarded the recommendations for separation to the approving authority. In the recommendations, it was stated that the applicant had no motivation for continued service and will not respond to either counseling or rehabilitation. It was recommended that he be separated with an other than honorable discharge.

e. On 7 September 1982, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, for the good of the service and directed that he be reduced to the lowest grade and issued an under other than honorable conditions discharge.

f. He was separated from service on 22 October 1982. His DD Form 214 shows he was separated in accordance with Chapter 10 (for the good of the service) of AR 635-200 with an other than honorable conditions characterization of service. He completed 3 years, 8 months, and 4 days of active service. It also shows he was awarded or authorized the Army Service Ribbon.

5. By regulation (AR 635-200), in effect at the time, states an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

6. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Although the applicant provides post-service character evidence, the Board concluded that evidence was insufficient to overcome the misconduct leading to his separation. Therefore, the Board recommended denying 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.

5/15/2024

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CHAIRPERSON

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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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provides 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. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that 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/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. 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 based on equity, injustice, or clemency grounds, BCM/NRs 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. 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//