

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2024

DOCKET NUMBER: AR20230008914

APPLICANT REQUESTS: reconsideration of his previous request to upgrade his under other than honorable conditions characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 31 July 1984

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 AR20130018182 on 5 June 2014.

2. The applicant states, in effect:

a. Because of a failed marriage, he resulted to drinking and drugging. He was a 12B (Combat Engineer) stationed at Fort Dix, New Jersey. One day he and a friend went to buy some drugs in New York. They stopped at this one place and came to find out the drug dealer was his battalion commander. They were called into the battalion commander's office that following Monday and he gave them an ultimatum because he could not risk them telling on him. The commander threatened to kick them out of the Army or send them to Leavenworth. He tried to seek help, but the military was afraid to help him, and civilian lawyers told him that they could not get involved in military matters. Not knowing what to do and being afraid, he followed the advice of some other Soldiers and went absent without leave (AWOL).

b. He has been incarcerated numerous times for petty charges, but now he has a job, bank accounts, and owns a car, and gave his life to God. Things are going good with his life. He is 65 years old, and he is on medication. He is seeking help from the Department of Veterans Affairs.

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

a. He enlisted in the Regular Army on 11 March 1982.

b. The applicant's duty status changed on the following dates:

- Present for Duty (PDY) to AWOL – 3 January 1983
- AWOL to PDY – 5 January 1983
- PDY to AWOL – 29 April 1983
- AWOL to PDY – 3 May 1983
- PDY to AWOL – 2 June 1983
- AWOL to Dropped from Rolls (DFR) – 3 July 1983
- DFR to attached/PDY – 29 August 1983
- PDY to AWOL – 28 October 1983
- AWOL to DFR – 26 November 1983
- DFR to PDY – 19 June 1984

c. On 19 June 1984, court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 28 October 1983 to on or about 19 June 1984.

d. An AWOL – Deserter Verification Sheet, dated 19 June 1984, shows the applicant had two previous Article 15s for being AWOL in June 1983.

e. On 19 June 1984, the applicant elected not to undergo a separation medical examination.

f. On 20 June 1984, after consulting with legal counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial, under Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10. In doing so, he acknowledged that the charges preferred against him under the Uniformed Code of Military Justice, authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged:

- he had not been subjected to coercion with respect to his request for discharge
- he had been advised of the implications that were attached to it by submitting the request
- by submitting the request, he was acknowledging he was guilty of the charge(s) against him or of a lesser included offense(s) therein contained which also authorized the imposition of a bad conduct or dishonorable discharge

- he stated that under no circumstances did he desire further rehabilitation, for he had no desire to perform further military service
- he further understood that he may be discharged under conditions which were other than honorable and furnished an Under Other Than Honorable Discharge certificate
- 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 Veteran's Administration
- he could be deprived of his rights and benefits as a veteran under both Federal and State law
- he could encounter substantial prejudice in civilian life because of an under other than honorable discharge
- he understood that there was no automatic upgrading or automatic review of a less than honorable discharge by any Government agency or the ABCMR
- he was advised he could submit any statements in his own behalf, and elected not to do so

g. On 25 June 1984, the immediate commander recommended approval of the request for discharge in lieu of trial by court-martial, with characterization of service under other than honorable conditions. The commander noted that in his opinion, the applicant was not motivated for continued service and would not respond to either counseling or rehabilitation. On 26 June 1984, the intermediate commander echoed this recommendation.

h. The separation authority approved the recommended discharge on 16 July 1984, directed the applicant be reduced to the lowest enlisted grade, and be issued an under other than honorable conditions discharge.

i. The applicant was discharged on 31 July 1984. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, in the rank grade of private/E-1, and his service was characterized as under other than honorable conditions. This form also shows in:

- Item 12c (Net Active Service This Period): 1 year, 5 months, and 27 days
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, Sharpshooter Qualification Badge with rifle bar (M-16), and the Sharpshooter Qualification Badge with hand grenade bar.
- Item 28 (Narrative Reason for Separation): For the Good of the Service – In lieu of Court-Martial
- Item 29 (Dates of Time Lost During This Period): 3 January 1983 – 4 January 1983, 29 April 1983 – 2 May 1983, 2 June 1983 – 27 August 1983, and

28 October 1983 – 18 June 1984

4. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge processing within that board's 15-year statute of limitations.
5. The ABCMR considered the applicant's request to upgrade his under other than honorable conditions characterization of service in ABCMR Docket Number AR20130018182, on 5 June 2014. The Board denied his requested relief after determining the evidence presented did not demonstrate the existence of a probable error or injustice and that the overall merits of the case were insufficient as a basis for correction. Based on the applicant's record of indiscipline which included 325 days of lost time due to being AWOL, his service did not meet the standards of acceptable conduct and performance of duty for Army personnel. His conduct rendered his service unsatisfactory.
6. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.
7. The Board should consider the applicant's new argument and his overall record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and the applicant provided insufficient evidence of post-service achievements and no letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : 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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20130018182 on 5 June 2014.

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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. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a member who 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. The request for discharge may be submitted at any time after court-martial charges are preferred against the member, regardless of whether the charges are referred to a court-martial and regardless of the type of court-martial to which the charges may be referred. The request for discharge may be submitted at any stage in the processing of the charges until final action on the case by the court-martial convening authority. Commanders will ensure that a member

is not coerced into submitting a request for discharge for the good of the service. The member is given reasonable time to consult with a consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the member may elect to submit a request for discharge for the good of the service. The member will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a member who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the member's overall record during their current enlistment. For members who had completed entry level status, characterization of service as honorable was not authorized unless the member's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. The recipient of a general discharge is normally a member whose military record and performance is satisfactory.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

2. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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//