

IN THE CASE OF: ██████████

BOARD DATE: 17 April 2024

DOCKET NUMBER: AR20230009551

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge and a different, presumably more favorable, separation code.

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Self-authored letter
- Character reference letter
- Civilian job listing
- Civilian court documents

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 his feelings of the life he had in the military were always proud and he was honored to serve his country. His training was at ██████████. The town and the base were very racial, he could not keep his family there due to safety concerns. Being apart from his wife led to marriage problems. He was always asking for a transfer, but was repeatedly denied. He spent every day at the shooting range, his hearing was ringing after a full day. He was placed in confinement for driving while intoxicated, and subsequently for possession of marijuana. A correctional officer advised him to voluntarily request a discharge and to never look back, forget about being in the Army. The military was always on his mind, he served his country.
3. The applicant enlisted in the Regular Army on 2 August 1977. Upon completion of initial entry training, he was awarded military occupational specialty 12C (Bridge Specialist). The highest grade he attained was E-4.

4. On 17 April 1978, the applicant was reported as absent without leave (AWOL) for the day, from 0645 hours until 1600 hours.
5. On 25 April 1978, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for going AWOL. His punishment included reduction in grade to E-1, forfeiture of \$50.00 pay for one month, and seven days extra duty.
6. On 7 March 1980, the applicant accepted NJP under Article 15 of the UCMJ, for operating a vehicle while drunk, on or about 1 March 1980; and willfully disobeying a lawful order not to operate a vehicle on post for six months, on or about 1 March 1980. His punishment was reduction in grade to E-1, forfeiture of \$224.00 pay for one month, and 30 days confinement.
7. On 23 April 1980, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.
8. Court-martial charges were preferred against the applicant on 25 April 1980 for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with one specification of wrongfully possessing, approximately 150 grams, more or less of marijuana.
9. On 13 May 1980, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a bad conduct discharge; and the procedures and rights that were available to him.
 - a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged 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 Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.
 - b. He submitted a statement in his own behalf, stating he was married with two children, and he is not paid enough to support his family.

10. On 16 May 1980, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

11. The separation authority approved the applicant's request for discharge for the good of the service on 21 May 1980, and directed the issuance of a DD Form 794A (UOTHC Discharge Certificate).

12. The applicant was discharged on 30 May 1980. He was credited with 2 years, 9 months, and 29 days of net active service this period. His DD Form 214 contains the following entries in:

- Item 24 (Character of Service) – UOTHC
- item 25 (Separation Authority) – AR [Army Regulation] 635-10 [sic]
- item 26 (Separation Code) – JFS
- item 27 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation) – For the Good of the Service

13. The applicant provides the following (provided in entirety for the Board):

a. A character reference letter from his spouse, detailing the support he provides his family, his politeness and generosity. She affirms he was a proud Army Soldier, who served his country. She notes he has hearing issues and listens to the television loud.

b. [REDACTED], court document that shows he was discharged from the conditions of his community supervision for DWI [Driving While Intoxicated]-3rd or more.

14. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

15. 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, possession of marijuana and driving under the influence. Although the applicant provided character letters of support attesting to his character and commitment to his family, the applicant provided no post service achievements for the Board to weigh as a clemency determination.

2. Evidence of record shows, at the time of separation, documentation supports the separation code properly identified on the applicant’s DD Form 214. As such, the Board determined under liberal consideration changes to the applicant’s separation code are not warranted. Furthermore, the Board agreed 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 to a more favorable characterization of service. 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.

4/19/2024

X

CHAIRPERSON

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 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed the separation code "JFS" as the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, for conduct triable by court-martial. Additionally, the SPD/Reentry Eligibility (RE) Code Cross Reference Table established RE code "4" as the proper reentry code to assign to Soldiers separated under this authority and for this reason.
3. Army Regulation 635-10 (Personnel Separations – Processing Personnel for Separation) sets forth the uniform procedures for the transfer preprocessing and transfer processing of personnel for separation. The version in effect at the time provided that:
 - a. Established standardized transfer preprocessing requirements for all military personnel offices (MILPO), personnel service companies, and personnel service divisions.

b. Standardized transfer processing procedures at transfer points, MILPO's, personnel service companies, and personnel service divisions authorized to accomplish separations.

4. 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.

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/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//