

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 19 April 2024

DOCKET NUMBER: AR20230009558

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 149 (Application for Correction of Military Record), with self-authored statement
- Diploma, Individual Infantry Training, 24 January 1986
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 17 September 1986
- three statements of support

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 states, in effect:

a. After arriving at the Military Entrance Processing Station (MEPS), he divulged that he had torn ligaments in his knee from playing football. His entry to basic training was delayed until he could be re-evaluated. He saw a MEPS physician, who medically cleared him to go to jump school.

b. He graduated from basic training and advanced individual training. However, on his final jump, he landed wrong and re-injured his knee. He reported to his permanent duty station at Fort Bragg, NC. When he arrived at reception, he was placed on a waiting list to see an orthopedic doctor. He met his first sergeant and commander, who both told him he would not be there long because he was not "combat ready." He was placed on profile and could not train or jump with his unit. After two months, he decided to take leave, go home, and see a doctor. He had permission from his "stick leader" and first sergeant to do so. As a 21-year old kid, he believed what he was told.

c. He was instructed to go home and wait for more information. He contacted his unit once per week. His doctor recommended arthroscopic surgery to repair his knee. When he contacted his unit, he was told to go ahead with the surgery and that orders for his medical discharge were pending. The local Sheriff showed up at his mother's house with a warrant for his arrest for being absent without leave (AWOL). He returned to Fort Bragg and went to see a military lawyer. The lawyer recommended he turn himself into the military police and let them charge him with AWOL. By this time, he was disgusted and tired of everything, so he agreed to do it.

d. He was discharged for the good of the service with a UOTHC discharge. He has lived with this for most of his life and has always felt like a second class citizen. He was raised to love and defend his country and is proud to be a Veteran. He feels like this was taken from him, and a black mark has been put on his name.

3. The applicant enlisted in the Regular Army on 8 October 1985, for a 3-year period. Upon the completion of initial entry training, he was awarded military occupational specialty 11B (Infantryman). The highest rank he attained was private first class/E-3.

4. Three DA Forms 4187 (Personnel Action) show the following changes in the applicant's duty status:

- Present for Duty (PDY) to AWOL, on 3 May 1986
- AWOL to Dropped from Unit Rolls (DFR), on 2 June 1986
- DFR to Attached/PDY, surrendered to military authorities, on 24 July 1986

5. Court-martial charges were preferred against the applicant, on 29 July 1986, for violation of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL, from on or about 3 May 1986 until on or about 24 July 1986.

6. The applicant consulted with legal counsel on 30 July 1986.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge for the good of the service, under the provision of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged his understanding that by requesting a 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 acknowledged making this

request free of coercion. He further acknowledged understanding if his discharge request were 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.

c. The applicant elected not to provide a statement in his own behalf.

7. The applicant's immediate and intermediate commanders recommended approval of the request for discharge for the good of the service and further recommended the issuance of a UOTHC discharge.

8. The separation authority approved the applicant's request for discharge for the good of the service on 18 August 1986 and further directed the applicant be reduced to private/E-1 and the issuance of a UOTHC discharge.

9. The applicant was discharged on 17 September 1986, under the provisions of AR 635-200, for the good of the service – in lieu of trial by court-martial. His DD Form 214 confirms his character of service was UOTHC, with separation code KFS and reenlistment code RE-3, 3B. He was credited with 8 months and 19 days of net active service this period, with lost time from 3 May 1986 to 23 July 1986. He was awarded or authorized the Army Service Ribbon, Parachutist Badge, and the Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16).

10. The applicant provides a copy of his diploma from Individual Infantry Training, dated 24 January 1986, and three statements of support:

a. The applicant's mother, B.H.B., states, her son's dream was to join the Army. He went through all of his training and injured his knee during jump school. His only objective was to get better and continue his time in the Army. While home on leave, he told her he had permission from his commander to see a local orthopedic doctor. He called his commander once a week to report in. Then the sheriff showed up at her door saying [the applicant] was AWOL. She was devastated. He assured her not to worry, he trusted his commanding officers. He is a patriotic person and was raised in and around a family of military men. He would have made the military his career, if not for his knee injury.

b. The applicant's wife, G.H., states, she was a witness to the events that happened in 1985 - 1986. After reporting to jump school, [the applicant] was on injured reserve for two and a half months. He was told by his superiors to see a local doctor and have surgery. She was with him multiple times when he called to check in with his commanding officer. He was told to stay home and await further orders. He was also told he was in the process of being discharged. He had no reason not to believe them.

When the sheriff came with a warrant, he was confused and felt he was misled. He returned to Fort Bragg and was told by a lawyer that if he went to court-martial, he would lose. So, he elected the discharge. It has bothered him since he received it. She feels he was railroaded out of the Army and cheated of his rights as a Veteran.

c. In a third statement of support, the author states, the applicant is a loyal patriot, who intended to serve out of civic duty and selflessness in mind and heart. [The applicant] prepared him and encouraged him in his own military career, by encouraging him to do his civic duty, training him in military etiquette, customs and courtesies, and the importance of the chain of command. [The applicant's] diligence and dedication to country continued, despite his discharge. Without his leadership skills and dedication to country, the author's 28 years of service may not have come to fruition. [The applicant] has been a consummate citizen. His discharge is a travesty to him and a deterrent to others who are capable and brave enough to enter service now.

11. Discharges 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. A UOTHC characterization of service is normally considered appropriate.

12. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

13. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 17 September 1986 discharge characterized as under other than honorable conditions. He states:

"Please see attached statements that will explain how I injured my left knee and the instructions I was given and how the Army discharged me. This correction should be made because I was following the instructions given to me at the time as the result of my left knee injury. I had no intentions of doing anything to get myself into trouble and I wanted to stay in the Army."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 8 October 1985 and was discharged under other than honorable conditions 17 September 1986 under the separation authority provided by chapter 10 of AR 635-200, Personnel Separations – Enlisted Personnel (20 July 1984): Discharge for the Good of the Service. It lists one period of lost time: 3 May 1986 thru 23 July 1986.

d. A Charge Sheet (DD form 458) shows the applicant was charged with absence without leave (AWOL) from 3 May 1986 thru 24 July 1986.

e. On 30 July 1986, the applicant voluntarily requested discharge for the good of the service under provisions provided in chapter 10 of AR 635-200. His request was approved by the brigade commander on 18 August 1986.

f. No medical documentation was submitted with the application. Because of the period of service under consideration, there are no encounters in AHLTA. JLV shows he has not registered with the Veterans Hospital Administration.

g. There is no evidence the applicant had a mental health or other medical condition which would have then contributed to or would now mitigate his UCMJ violation; or that would have failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness, and been a cause for referral to the DES prior to his discharge.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The record shows that charges were preferred on the applicant for violation of the Uniform Code of Military Justice, authorized to impose a punitive discharge; specifically, the applicant was charged with being absent without leave (AWOL) from 3 May 1986 to 24 July 1986. Subsequently, the applicant, through counsel, voluntarily requested a Chapter 10, in lieu of trial by court-martial. The chain of command determined an under other than honorable conditions characterization was appropriate. The Board carefully reviewed the applicant's statement and despite the medical review finding no behavioral health condition to mitigate the circumstances, determined his statement contending he was in communication with his unit up until the point he was apprehended was sufficient to warrant an upgrade to his characterization of service to honorable under published DoD guidance for liberal consideration of discharge upgrade requests.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 17 September 1986, to show in:

- item 24 (Character of Service): Honorable
- item 25 (Separation Authority): No Change
- item 26 (Separation Code): No Change
- item 27 (Reentry Code): No Change
- item 28 (Narrative Reason for Separation): No Change

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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, USC, Section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent.
2. Title 10, USC, Section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30 percent.
3. 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.
4. Title 10, USC, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
5. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System (PDES) and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. It provides for a medical evaluation board that is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501 (Standards of Medical Fitness), Chapter 3. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.
 - a. Paragraph 2-1 provides that the mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her

office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform his or her duties and assign an appropriate disability rating before he or she can be medically retired or separated.

b. Paragraph 2-2b (1) provides that when a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), his or her continued performance of duty (until he or she is referred to the PDES for evaluation for separation for reasons indicated above) creates a presumption that the member is fit for duty. Except for a member who was previously found unfit and retained in a limited assignment duty status in accordance with chapter 6 of this regulation, such a member should not be referred to the PDES unless his or her physical defects raise substantial doubt that he or she is fit to continue to perform the duties of his or her office, grade, rank, or rating.

c. Paragraph 2-2b (2) provides that when a member is being processed for separation for reasons other than physical disability, the presumption of fitness may be overcome if the evidence establishes that the member, in fact, was physically unable to adequately perform the duties of his or her office, grade, rank, or rating even though he or she was improperly retained in that office, grade, rank, or rating for a period of time and/or acute, grave illness or injury or other deterioration of physical condition that occurred immediately prior to or coincidentally with the member's separation for reasons other than physical disability rendered him or her unfit for further duty.

6. AR 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. 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.

7. 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.

a. 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 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//