

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 March 2024

DOCKET NUMBER: AR20230009683

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge.

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), for the period ending 25 June 2008
- Attachment A: Self-Authored Statement
- Attachment B: National Personnel Records Center (NPRC) Service Record
- Attachment C: Conscientious Objector Packet

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 he does not believe the characterization represents the quality of his service, as demonstrated in his service record. He has no marks against him, he did not receive any informal discipline during his time in the Army, has only received positive comments, and although his time was short, a brief enlistment should not outweigh his otherwise clean record. It is his understanding that a general, under honorable conditions discharge is given when a Soldier has had problems in their military service as evidenced by nonjudicial punishment. He further understands that the commander should justify the basis for a general discharge, which was not the case for his separation.

a. The decision to seek a discharge for conscientious objection was a tough one. He was sensible enough at the time to understand that he had never experienced such a profound shift in his beliefs or the way he viewed the world, and that accordingly, he should act cautiously. He was fond of his job at that point in his nascent military career and where it was leading him. He was also honored to be attached to a Special Forces

group for intelligence work. He debated whether to finish out his commitment, even if it would not be true to his incipient beliefs, or to seek discharge as a conscientious objector. Ultimately, he sought the discharge option. He appreciated that the U.S. Army maintained internal procedures for those who have such profound shifts in their beliefs, and even though newly formed, were genuine. In short, the newly formed beliefs changed the direction to which his sense of duty compelled him to enlist.

b. He made sure he always did what was asked and continued to do so even after he applied for a conscientious objector discharge. He never received formal discipline and was very surprised at the characterization of his service upon receipt of his separation packet. He believed at the time it was likely associated with his length of service. The applicant references two Army Discharge Review Board (ADRB) cases wherein the command did not state legitimate reasons to characterize the discharge as general and similarly, the same applies in his case where there is a clear lack of discipline marks to warrant a general discharge.

c. To the extent post-service achievements are considered, he started up a faith based non-profit organization in his community that provides mentorship and a safe place for adolescents. He attended law school and now serves as an attorney in New York City. He is also a family man with three lovely children. He is seeking an upgrade of his discharge that more accurately reflects his time in service.

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

a. He enlisted in the Regular Army on 1 August 2006.

b. His Enlisted Record Brief shows he was assigned to the 7th Special Forces Group, Fort Bragg, NC on or about 6 May 2007.

c. A DA Form 4187 (Personnel Action) shows on 13 September 2007, the applicant requested separation based on conscientious objection, in accordance with (IAW) Army Regulation (AR) 600-43 (Conscientious Objection).

d. A personal statement provided by the applicant noted before joining the Army, he never really thought about what Jesus Christ would actually say about violence and killing, although he had a hard time killing animals and/or bugs. The full statement is available for review by the Board, but states in part:

(1) His basic military training did not challenge his non-violent predisposition, but he began to question the moral justification for killing during the bayonet course. He attempted to bury the thoughts and went through the motions, but his misgivings about war and violence festered as he entered intelligence analyst training in [REDACTED]. He enjoyed airborne school and, in all honesty, basic military training did not afford him the

real-life experience to truly consider his non-violent beliefs. He was able to truly dive into his religious beliefs upon arriving at Fort Bragg, where he became more individualistic in his ideas. He noticed a common element in the Soldiers he worked with, there was a casual acceptance of and even enthusiasm, for unbridled violence and killing. The thought repulsed him and their nonchalant acceptance of killing removed the blinders from his eyes. He began to think more of what was right or wrong for himself, not what was right or wrong for everyone else.

(2) During his Counter Terrorism training he found that he had a vastly different reaction to what he saw than the others in the room. Others in the room saw a religious world whose people, in majority hate us, causing us to ramp up security and actively oppose this hatred. He saw, conversely, people that have been misled and was moved with compassion for them, no matter how despicable their acts. He does not judge others for their military service because they do what they feel is right. He felt he could not be a part of an organization whose primary mission is to use force, which goes against his moral and ethical convictions. His religious convictions are the very fabric of his being, and do not allow for the use of force. The military's primary mission is to use force to accomplish the objectives of the US government. If his convictions disallow the use of force; obviously military service runs contrary to his convictions.

e. The applicant was interviewed by the unit chaplain who opined his sincerity and depth of conviction was authentic and genuine. The applicant's lifestyle was consistent with his beliefs as a witness to his faith and Jesus Christ. He believed the applicant would continue to experience internal turmoil while serving in any military capacity.

f. A DA Form 3822-R (Report of Mental Status Evaluation), dated 18 October 2007, confirmed the applicant was referred for a mental evaluation because he was being considered for separation. The physician noted in the remarks, the applicant was a conscientious objector and had applied for conscientious objector status. The evaluation further indicated:

- normal behavior and fully alert
- fully oriented and unremarkable mood or affect
- clear thinking process and normal thought content
- he had the mental capacity to understand and participate in the proceedings
- he was mentally responsible
- he met the retention requirements of AR 40-501

g. On 13 November 2007, an investigating officer (IO) conducted a Conscientious Objector Hearing, during which he interviewed the applicant, his supervisor, and two friends which served as ministers.

h. On 19 November 2007, the applicant acknowledged he understood his rights and entitlements pertaining to the hearing. He also signed a statement of understanding which indicated he may not be entitled to benefits if he was discharged as a conscientious objector under certain conditions.

i. On 29 November 2007, the IO rendered his findings and recommendations pertaining to the applicant's request. He recommended approval of the applicant's Conscientious Objector (1-0) application under the provisions of AR 600-43. He believed the applicant's beliefs to be sincere and that he had a strong conviction as defined by this regulation. He displayed his convictions by stating when he contemplates continued service in an organization whose primary mission goes against his moral and ethical convictions, he is "close to tears if not outright crying."

j. On 8 February 2008, the General Court Martial Convening Authority (GCMCA), consistent with the chain of command recommendations, recommended approval of the applicant's request for 1-0 Conscientious Objector status and forwarded the application to Headquarters, Department of the Army for processing.

k. On 14 April 2008, the Acting Deputy Assistant Secretary (Army Review Boards) informed the applicant's chain of command of the Department of the Army Conscientious Objector Review Board (DACORB) to approve the applicant's request for Conscientious Objector (1-0) status. After thorough examination of the case record, the DACORB determined by 2-1 vote, the applicant presented convincing evidence, in accordance with regulatory guidance, that his stated beliefs warranted award of (1-0) status. The character of service would be determined by the command.

l. On 29 May 2008, the GCMCA noted DACORB directed the applicant's discharge and he would be issued a separation certificate IAW AR 600-43, paragraph 3-4. He issued an Under Honorable Conditions Discharge Certificate.

m. On 25 June 2008, he was discharged from active duty with an under honorable conditions (General) characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 10 months, and 25 days of active service with no lost time. He was assigned separation code KCM and the narrative reason for separation listed as "Conscientious Objector," with reentry code 3. It also shows he was awarded or authorized:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Parachutist Badge

4. By regulation (AR 635-200), a characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

5. In reaching its determination, the Board can consider the applicant's petition and his service record 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 to support the applicant's contentions for an upgrade of his under honorable conditions (General) discharge. The Board noted the applicant signed a statement in several variations stating "he understood that a discharge as a conscientious objector who refused to perform military duty will bar all rights under any laws administered by the VA.

2. The Board noted the applicant's post service accomplishments and character letters of support attesting to his honorable conduct. However, the Board determined the applicant understood the conditions of his discharge and has provided insufficient evidence of an error or injustice that warrants for clemency consideration. The Board agreed that the applicant's discharge characterization of under honorable conditions (general) is warranted. The Board determined relief is not warranted and denied relief.

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 the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

4/8/2024

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 600-43 (Conscientious Objection) sets forth policy, criteria, responsibilities, and procedures to classify and dispose of military personnel who claim conscientious objection to participation in war in any form or to the bearing of arms. An Honorable Discharge Certificate (DD Form 256A) or a General Discharge Certificate (Under Honorable Conditions) (DD Form 257A) will be furnished. Enlisted personnel will be furnished a discharge certificate in accordance with AR 635-200.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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. Paragraph 3-7b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

4. 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.

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 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.

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//