

IN THE CASE OF: ██████████

BOARD DATE: 11 April 2024

DOCKET NUMBER: AR20230010145

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to honorable.

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

DD Form 149 (Application for Correction of Military Record), 3 May 2023

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 did not know his character of discharge would negatively affect his benefits and health care, and if he had known he would have taken care of it before.
3. The applicant enlisted in the Regular Army on 12 May 1978 for a 3-year period. He was awarded military occupational specialty of 19E (Armor Crewman).
4. The applicant received company grade nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for being absent without leave (AWOL) on or about 15 November 1978 until on or about 13 October 1981. His punishment imposed was forfeiture of \$250.00 pay per month for 2 months, extra duty, and restriction for a period of 30 days.
5. Court-martial charges were preferred against the applicant for violation of the UCMJ on 9 January 1979. The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 15 November 1978 and remained AWOL.
6. Orders 203-602, dated 20 October 1981, show the applicant arrived on 19 October 1981 from a dropped from roll status, pending disposition instructions from his assigned unit.

7. On 2 November 1981, the applicant's commander notified the applicant of the intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 14, for misconduct - AWOL. The commander noted his reasons for the proposed action were for the applicant being AWOL in excess of one year.
8. On the same date, the applicant acknowledged receipt of the proposed separation notification memorandum and consulted with counsel. He was advised of the basis for the contemplated separation action against him, the rights available to him, and the effect of any action taken by him to waive those rights. The applicant waived consideration, a personal appearance, and consulting counsel before a board of officers. He additionally understood, he may encounter prejudice in his civilian life and elected to not submit a statement on his own behalf.
9. On 3 March 1982, the applicant's immediate commander formally recommended the applicant's separation under the provisions of AR 635-200, Chapter 14, based on AWOL in excess of one year.
10. On 14 April 1982, the separation authority approved the recommended separation under the provisions of AR 635-200, paragraph 14-22a. He further directed issuance of an UOTHC Discharge Certificate.
11. The applicant was discharged on 28 April 1982 under the provisions of AR 635-200, Chapter 14, by reason of misconduct - AWOL. His DD Form 214 confirms his service was characterized as UOTHC with separation code JKD and reenlistment code RE-4. He was credited with 1 year and 20 days of net active service with time lost from 15 November 1978 to 12 January 1981.
12. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200, Chapter 14, for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.
13. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

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 no evidence of post-service achievements or 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:

| <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.

8/27/2024

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. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

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/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 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//