

IN THE CASE OF: ██████████

BOARD DATE: 24 April 2024

DOCKET NUMBER: AR20230010147

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

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

- DD Form 149 (Application for Correction of Military Record), 4 June 2023
- DD Form 214 (Report of Separation from Active Duty), 16 May 1974

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 has recently discovered his discharge was changed a year after he was released. He was offered an under honorable conditions (general) discharge for medical reasons and his command was unable to place him in a proper duty status due to an injury which occurred while he was on duty.

a. He since has been informed his injury is covered through the Department of Veterans Affairs (VA), this information was not provided to him while on active duty. He was told that because of his medical condition the Army was unable to place him in a duty status and he accepted an under honorable conditions (general) discharge.

b. He never had nonjudicial punishments (NJP) and never received any Article 15's which his letter from the VA stated. He has been suffering with medical issues since his time in service and requests an upgrade of his discharge due to the error which occurred as he received an under conditions other than honorable discharge, and it should have been a under honorable conditions (general) discharge.

3. The applicant enlisted in the Regular Army on 27 October 1972, for a period of 4 years. He was awarded the military occupational specialty of 11B (Light Weapons Infantryman) and the highest rank he attained was private first class/E-3.
4. His DA Form 20 (Enlisted Qualification Record) shows he was absent without leave (AWOL) from on or about 20 November 1972 until on or about 29 November 1972.
5. Court-martial charges were preferred against the applicant on 26 April 1974, for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows the following:
  - a. Charged with two specifications of assault by throwing cups of tea on a Military Police Investigator (MPI) and a Sergeant on or about 23 April 1974;
  - b. Charged with one specification of communicating a threat to a MPI on or about 23 April 1974;
  - c. Charged with one specification of disobeying a lawful order on or about 17 April 1974;
  - d. Charged with one specification of burning his military identification card on or about 18 April 1974;
  - e. Charged with three specifications of disobeying a lawful order from his superior noncommissioned officer on or about 29 March 1974 and on or about 1 April 1974; and
  - f. Charged with seven specifications of failure to go to his prescribed appointed place on duty on the following dates:
    - 26 March 1974
    - 28 March 1974
    - 30 March 1974
    - 31 March 1974
    - 2 April 1974
    - 3 April 1974
    - 4 April 1974
6. On 26 April 1974, after consulting with counsel, the applicant executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an under other than honorable conditions character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected to submit a statement on his own behalf, this statement is void in the applicant's official military personnel file.

7. On 30 April 1974, the applicant's immediate and intermediate commander's recommended approval of the applicant's request for discharge for the good of the service and that he be issued an undesirable discharge.

8. A legal review was conducted and determined there was no legal objection to the applicant's discharge for the good of the service, with the issuance of an undesirable discharge.

9. The separation authority approved the applicant's request for discharge for the good of the service on 8 May 1974, and further directed the issuance of a DD Form 258A (Undesirable Discharge Certificate) and reduction to the lowest enlisted grade.

10. The applicant was discharged on 16 May 1974, under the provisions of AR 635-200, paragraph 10, for the good of the service. His DD Form 214 confirms his character of service was under conditions other than honorable with Separation Program Number 246 and reenlistment code RE-3B. He was credited with 1 year, 6 months, and 10 days of net active service this period, with 10 days of time lost.

11. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An under other than honorable conditions characterization of service is normally considered appropriate.

12. 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:

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 pattern of misconduct. The Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 1 year, 6 months, and 10 days of net active service this period, with 10 days of time lost.

2. The Board noted the applicant provided no post service achievements or character letter of support attesting to his honorable conduct for the Board to weigh a clemency determination. The Board agreed the applicant's record is absent any evidence the was discharged with an under honorable conditions (general) discharge. Furthermore, the Board determined 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 an under honorable conditions (general) discharge. 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.

5/6/2024

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. 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. 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. 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.

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 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//