

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2024

DOCKET NUMBER: AR20230010222

APPLICANT'S REQUEST: in effect, an upgrade of his discharge under other than honorable conditions (UOTHC).

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Standard Form (SF) 180 (Request Pertaining to Military Records)
- DD Form 256A (Honorable Discharge Certificate – United States Army) (2)
- Associate degree documentation
- DA Form 4874 (Certificate of Promotion) (2)
- Recommendation for promotion, dated 13 February 1982
- DA Form 4980-18 (Army Achievement Medal (AAM) Certificate)
- DD Form 214, for the period ending 12 December 1989

FACTS:

1. The applicant did not file within the three-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 he is making this request to clear his records.
3. The applicant's complete military service record is not available for review. This case is being considered based upon documents provided by the applicant.
4. A DD Form 256A shows the applicant was honorably discharged from the Regular Army on 28 October 1976.
5. A Fiorello H. LaGuardia Community College of the City University of New York certificate shows the applicant received an Associate of Arts degree on 17 June 1979.

6. The applicant's DD Form 214 shows he reenlisted in the Regular Army on 19 February 1980. Upon completion of training, he was awarded military occupational specialty 71L (Administrative Specialist).
7. A DA Form 4874 shows he was promoted to the rank/grade of specialist four/E-4 on 1 March 1981.
8. A Headquarters, 4th Battalion (Mechanized), 20th Infantry, Fort Clayton, Panama memorandum, dated 13 February 1982, shows the applicant was recommended for promotion to the rank/pay grade of sergeant (SGT)/E-5.
9. A DD Form 256A and the applicant's DD Form 214 shows he was honorably discharged from the Regular Army on 8 March 1983 for the purpose of immediate reenlistment.
10. A DA Form 4980-18 shows the applicant was awarded the AAM for meritorious service from 4 August 1983 to 30 September 1984 on 20 November 1984. This certificate does not reflect a permanent order number.
11. A DA Form 4874 shows he was promoted to the rank/grade of specialist five/E-5 on 1 December 1984.
12. The applicant's available record is void of the specific facts and circumstances surrounding his discharge processing.
13. The applicant's DD Form 214 confirms he was discharged in the rank/grade of private/E-1 on 12 December 1989, under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, for the good of the service - in lieu of court-martial. His service was characterized as UOTHC. He was issued Separation Code "KFS", and Reenlistment Codes "3B 3C 3." He was credited with completion of 5 years, 10 months, and 19 days of net active service. He had time lost from 30 September 1985 to 4 September 1989. Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized (All periods of service)) shows he was awarded or authorized the Army Service Ribbon, Overseas Service Ribbon, Parachutist Badge, and Good Conduct Medal; it does not list the AAM.
14. Additionally, his DD Form 214 shows in Block 18 (Remarks) the entry, "IMMEDIATE REENLISTMENT THIS PERIOD: 800219-830308" (indicating 19 February 1980 to 8 March 1983). There is no entry specifying the applicant's period of honorable service (see Administrative Notes).
15. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. In doing so, he would have waived his opportunity to appear

before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

16. The applicant provides an SF 180 which shows he submitted a request to the National Archives and Records Administration to provide him copies of his DD Form 214 and Official Military Personnel File on 10 July 2023.

17. 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:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial 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.

a. Although the applicant's separation packet is not available for review, his DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10 (in lieu of trial by a court-martial), with an under other than honorable conditions discharge. Administrative separations 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 discharge character of service is normally considered appropriate. The Board found no error or injustice in his available separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. The Board noted that the applicant's service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

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: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending his DD Form 214 for the period ending on 12 December 1989 to show:

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 19800219 UNTIL 19830308

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the characterization of his discharge.

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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 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.

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

a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

4. Army Regulation 635-5 (Personnel Separations – Separation Documents), in effect at the time, prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes the standardized policy for preparing and distributing the DD Form 214. It states the

DD Form 214 provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

a. Paragraph 1-4b(5) of the regulation in effect at the time stated that a DD Form 214 would not be prepared for enlisted Soldiers discharged for immediate reenlistment in the Regular Army.

b. Paragraph 2-4h(13) of the regulation currently in effect states that item 13 lists awards and decorations for all periods of service in the priority sequence specified in Army Regulation 600-8-22 (Military Awards). Each entry will be verified by the Soldier's records.

c. Paragraph 2-4h(18) of the regulation currently in effect states that item 18 documents the remarks that are pertinent to the proper accounting of the separating Soldier's period of service. Subparagraph (c) states that for enlisted Soldiers with more than one enlistment period during the time covered by the DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify the appropriate dates. For Soldiers who have previously reenlisted without being issued a DD Form 214 and who are later separated with any characterization of service except "honorable," enter "CONTINUOUS HONORABLE ACTIVE SERVICE FROM" (first day of service which DD Form 214 was not issued) UNTIL (date before commencement of current enlistment)." Then, enter the specific periods of reenlistments as prescribed above.

5. Army Regulation 600-8-22 states the AAM is awarded to members of the Armed Forces of the United States, who while serving in a noncombat area on or after 1 August 1981, distinguished themselves by meritorious service or achievement. As with all personal decorations, formal recommendations, approval through the chain of command, and announcement in orders are required.

6. 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, 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//