

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 May 2024

DOCKET NUMBER: AR20230010258

APPLICANT REQUESTS:

- upgrade his discharge to honorable
- personal appearance before the Board via video or telephonically

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

DD Form 149 (Application for Correction of Military Record).

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, he was harassed and treated unjustly for defending himself to his commander and first sergeant (1SG). He was not allowed to have witness present during his questioning that led to his discharge and he was harassed until his separation. He was young at the time and was punished for doing exactly what he was trained to do. He was told there was nothing he could do about it. He does not have any documents to support his request except for the testimony of his parents.

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

a. On 27 July 1998, the applicant enlisted in the U.S. Army Reserve (USAR).

b. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant was ordered to active duty for training on 20 October 1998. He was honorably released from active duty on 18 May 1999. DD Form 214 shows the applicant completed 6-months and 29-days of active service.

c. On 26 February 2001, the applicant enlisted in the Regular Army.

d. On 14 March 2001, Orders Number 01-073-024, issued by Headquarters (HQs), 88th Regional Support Command, the applicant was assigned to the USAR Control Group (Annual Training) for cogent personal reasons, effective 14 March 2001.

e. On 9 May 2001, the applicant was counseled by his Officer in Charge (OIC) for failure to report for duty shaven. He was advised further conduct of that nature may result in punitive action under the Uniform Code of Military Justice (UCMJ) and/or separation from the service which could result in an under other than honorable conditions discharge.

f. On 6 July 2001, the applicant was counseled by his OIC for failure to obey a lawful order and failure to report to his appointed place of duty. The OIC was recommending to the chain of command the applicant be punished under the UCMJ. He was advised further conduct of that nature may result in punitive action under the UCMJ and/or separation from the service which could result in an under other than honorable conditions discharge.

g. On 9 July 2001, the applicant was counseled by his OIC for failure to report to his appointed place of duty. For his corrective training, he was required to report to the 1SG 30-minutes prior to first formation. He was advised further conduct of that nature may result in punitive action under the UCMJ and/or separation from the service which could result in an under other than honorable conditions discharge.

h. On 9 July 2001, the applicant was counseled by his OIC for receiving traffic citations from the local law enforcement agency. The applicant was driving his motor vehicle with someone else's license plate affixed to it and failure to register his motor vehicle.

i. On 10 July 2001, the applicant was counseled by his OIC for failure to report to his appointed place of duty and failure to follow a direct order. He failed to follow the corrective training plan to report to the 1SG 30-minutes prior to formation. His corrective training was to report to the OIC 1-hour prior to first formation. He was advised further conduct of that nature may result in punitive action under the UCMJ and/or separation from the service which could result in an under other than honorable conditions discharge.

j. On 13 July 2001, the applicant was counseled by his OIC for failure to obey a lawful order and failure to report to his appointed place of duty. Since he could not meet the requirement of his corrective training, the OIC was recommending UCMJ action. He was advised further conduct of that nature may result in punitive action under the UCMJ and/or separation from the service which could result in an under other than honorable conditions discharge.

k. On 16 July 2001, the applicant waived his right to counsel for pending action under Article 15, UCMJ.

l. On 16 July 2001, the applicant accepted non-judicial punishment under the provisions of Article 15, UCMJ, for failure to report to his appointed place of duty. His punishment included reduction to the grade of private (PV2)/E-2, forfeiture of pay, extra duty and restriction. The applicant did not appeal the Article 15.

m. On 16 July 2001, the applicant was counseled by his OIC for violating a medical doctor's orders and failure to salute an officer. The applicant received 24-hours quarters for an injury but failed to remain in his quarters or the dining facility and he presented an officer the greeting of the day but failed to salute said officer. His corrective training was an essay to his OIC on customs and courtesies by the end of the week. He was advised further conduct of that nature may result in punitive action under the UCMJ and/or separation from the service which could result in an under other than honorable conditions discharge.

n. On 20 July 2001, the applicant was counseled by his OIC for failure to meet the terms of his corrective training. He failed to present his essay to his OIC on customs and courtesies. He was advised further conduct of that nature may result in punitive action under the UCMJ and/or separation from the service which could result in an under other than honorable conditions discharge.

o. On 30 July 2001, the applicant was counseled by his OIC for losing his meal card which is an accountable item. He was advised further conduct of that nature may result in punitive action under the UCMJ and/or separation from the service which could result in an under other than honorable conditions discharge.

p. On 30 August 2001, the applicant's duty status was changed from present for duty to Absent without Leave (AWOL).

q. On 29 September 2001, the applicant's duty status was changed from AWOL to dropped from the rolls which was reported to military law enforcement authorities.

r. On 14 January 2002, the applicant surrendered to military authorities at Fort Stewart, GA.

s. On 23 January 2002, the applicant was charged with the specification of AWOL on or about 30 August 2001 and remained in desertion until on or about 13 January 2002. The applicant's company, battalion and brigade commanders recommended disposition of charges be referred to a special court-martial empowered to adjudge a bad conduct discharge.

t. On 24 January 2002, a legal review concluded the specification alleged were warranted by the evidence in the report of investigation and there was court-martial jurisdiction over the applicant and charged offense. It was recommended the charge and specification be tried by a special court-martial empowered to adjudge a bad conduct discharge.

u. On 4 February 2002, the applicant selected defense counsel to represent him during the court-martial proceedings.

v. On 4 February 2002, the applicant's defense counsel requested additional time for the applicant to decide to submit a request for discharge in lieu of court-martial.

w. On 4 February 2002, the applicant requested voluntarily discharge in lieu of trial by court-martial for the specification of desertion. He made the request of his own free will and was not subject to coercion. He understood:

- the elements of the offenses and was guilty of the charges or lesser charges against him
- did not desire rehabilitation or the desire to perform further military service
- consulted with counsel
- may be discharged under other than honorable conditions
- may be deprived of many or all Army benefits
- may be ineligible for many or all benefits by the Veterans Administration
- may be ineligible for many or all benefits as a veteran under Federal and State laws
- may encounter substantial prejudice in civilian life
- discharge upgrade is not automatic
- may apply for discharge upgrade to the Army Discharge Review Board or Army Board for Correction of Military Records
- consideration by the boards did not imply discharge upgrade be granted
- may submit statement(s) on his own behalf

x. On 11 February 2002, the applicant's company, battalion and brigade commanders recommended approval of his request for discharge in lieu of trial by court-martial.

y. On 14 February 2002, legal review recommended the approval of the applicant's request for discharge in lieu of trial by court-martial.

z. On 14 February 2002, the separation authority directed the applicant be discharged in lieu of trial by court-martial and be issued an under other than honorable conditions discharge and reduced to the lowest enlisted grade.

aa. On 1 March 2002, Orders Number 060-0010, issued by HQs, 3rd Infantry Division (Mechanized) and Fort Stewart, the applicant was discharged on 1 March 2002.

bb. On 1 March 2002, the applicant was discharged from active duty under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10 (in lieu of trial by court-martial) with an under other than honorable conditions character of service in the rank of PV1. DD Form 214 shows the applicant completed 7-months and 11-days of active service. It also shows the applicant had lost time during the periods of 30 August 2001 through 12 January 2002 and 14 through 22 January 2002.

4. On 29 January 2024, in the processing of this case, the Criminal Investigation Division stated there was no law enforcement reports pertaining to the applicant regarding military sexual trauma reports.

5. On 11 April 224, in the processing of this case, the U. S. Army Inspector General Agency stated there were no inspector general records pertaining to the applicant.

6. On 22 January 2009, the Army Discharge Review Board notified the applicant that Docket Number AR20080004790 denied his request for a change in the character and/or reason for discharge. After carefully examining the applicant's record of service during the period of enlistment under review and considering the analyst's recommendation and rationale, the Board determined that the discharge was both proper and equitable and voted to deny relief. The applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant consulted with defense counsel, and voluntarily in writing, requested separation from the Army in lieu of trial by court-martial. In doing so, the applicant admitted guilt to the stipulated or lesser-included offenses under the UCMJ. The characterization of service for this type of discharge is normally under other than honorable conditions and that the applicant was aware of that prior to requesting discharge.

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 and AWOL. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination.

2. The Board found the applicant’s service record exhibits numerous instances of misconduct during his enlistment period for 7-months and 11-days of active service. In addition, the applicant had lost time during the periods of 30 August 2001 through 12 January 2002 and 14 through 22 January 2002. 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. Therefore, relief was denied.

3. The applicant’s request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
3. AR 635-200 (Personnel Separations – Enlisted Personnel) in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.
 - a. Paragraph 3-7a (Honorable discharge), 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. Where there have been infractions of

discipline, the extent thereof should be considered, as well as the seriousness of the offense(s). A Soldier will not necessarily be denied an honorable discharge solely by reason of the number of convictions by court-martial or actions under the UCMJ Article 15. Conviction by a general court-martial or by more than one special court-martial does not automatically rule out the possibility awarding an honorable discharge. An honorable discharge may be furnished when disqualifying entries in the Soldier's military record are outweighed by subsequent honest and faithful service over a greater period of time during the current term of service. It is a pattern of behavior and not the isolated incident that should be considered the governing factor in determination of character 'of service.

b. Paragraph 3-7 b (General discharge), 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. 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.

c. Paragraph 3-7 c (Under other than honorable conditions discharge), a discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexual conduct, security reasons, or in lieu of trial by court martial. When the reason for separation is based upon a pattern of behavior that constitutes significant departure from the conduct expected of Soldiers of the Army. When the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army. An under other than honorable conditions discharge will be directed only by the commander exercising general court-martial authority, general officer in command who has a judge advocate or legal advisor available to his or her command, a higher authority, or commander exercising special court-martial convening authority over the Soldier.

//NOTHING FOLLOWS//