

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 May 2024

DOCKET NUMBER: AR20230010391

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20070010825 on 13 December 2007.
2. The applicant states the characterization of his discharge has made it difficult to find suitable employment.
3. The applicant enlisted in the Regular Army on 27 April 1978.
4. The applicant received formal counseling on 3 July 1979 for failing to make formation.
5. On 30 November 1978, the applicant received nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for failing to go at the time prescribed to his appointed place of duty on or about 14 November 1978; and leaving his appointed place of duty on or about 15 November 1978.
6. Before a civilian court on 31 July 1979, the applicant was found guilty of unlawfully possessing less than one ounce of marijuana, on 15 July 1979. The court sentenced him to a fine of \$300.00 and 12 months confinement.
7. On 20 September 1979, the applicant received NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty, on or about 1 August 1979, and on or about 3 August 1979.

8. On 10 October 1979, the applicant received NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty, on or about 20 September 1979. His punishment included reduction in grade to E-2.
9. On 11 October 1979, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
10. The applicant's immediate commander notified him on 22 October 1979, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, Section III, for conviction by civil court.
11. On 26 October 1979, the applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 14, for misconduct. As the specific reasons, the commander cited the applicant's guilty plea to possession of marijuana.
12. On 28 November 1979, the applicant received NJP under Article 15 of the UCMJ, for engaging in a fistfight, on or about 31 October 1979. His punishment included reduction in grade to E-1.
13. On 28 November 1979, the applicant consulted with legal counsel and acknowledged he had been advised of the basis for the contemplated separation action. Following his consultation, he requested the right to personally appear before, and to have his case considered by a board of officers. He requested representation by counsel. He understood that as a result of issuance of a discharge under conditions other than honorable, he may be ineligible for many or all benefits as a Veteran under both Federal and State laws and that he could expect to encounter substantial prejudice in civilian life.
14. On 20 December 1979, a board of officers held a hearing to determine if the applicant should be eliminated from service. After careful consideration of the evidence before it, the Board found that the applicant was undesirable for further retention in the service, and his rehabilitation was not deemed practical. The Board recommended his discharge with an UOTHC characterization of service.
15. Consistent with the board's findings and recommendations, the separation authority approved the applicant's separation on 30 January 1980 and directed issuance of a DD Form 794A (UOTHC Discharge Certificate).
16. The applicant was discharged on 7 February 1980. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions

of Army Regulation 635-200, Section III, Chapter 14, for misconduct – conviction by civil court. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Code JKB and Reentry Code 3. He completed 1 year, 9 months, and 11 days of active service.

17. The applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 13 December 2007, the Board voted to deny relief and determined that the overall merits of this case are insufficient as a basis for correction of the records.

18. 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 relief was not 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. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for conviction by civil court with the commander citing his guilty plea for possession of marijuana by the civilian court. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned by his commander during separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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 amendment of the ABCMR decision rendered in Docket Number AR20070010825 on 13 December 2007.

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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. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.
2. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - a. 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.
 - b. 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.
 - c. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed. Section III, paragraph 14-12a, (Conviction by Civil Court) applied to individuals initially convicted by civil authorities, or action is taken which is tantamount to a finding of guilty, of an offense for which the maximum penalty under the UCMJ is death or confinement for one year or more.
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.

//NOTHING FOLLOWS//