

IN THE CASE OF: ██████████

BOARD DATE: 3 April 2024

DOCKET NUMBER: AR20230010437

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

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Medical Documents Radiology Reports

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 during his service and afterwards, he has suffered from chronic lower back pain and this pain prevented him from fulfilling his duties as a Soldier. He declares that in 1986, he was unable to receive adequate medical care to help his condition and regrets the decisions he made.
3. The applicant provides his DD Form 214 and medical documents detailing radiological reports and findings.
4. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 2 October 1984.
  - b. On 16 July 1986, court-martial charges were preferred on the applicant for being absent without authority from 25 March 1986 to 14 July 1986.
  - c. His service record is void of a request for discharge for the good of the service under the provisions of Chapter 10, Army Regulation (AR) 635-200 (Personnel

Separations – Enlisted Personnel). The service record is also void of any documentation of consultation with legal counsel.

d. On 14 July 1986, on a Medical Examination for Separation Statement of Option, the applicant elected that he did not desire a separation medical examination.

e. On 21 August 1986, consistent with the chain of command recommendations, the separation approval authority approved the request for discharge for the good of the service. He would be issued an Under Other Than Honorable Conditions Discharge Certificate (DD Form 794A) and reduced to the lowest enlisted pay grade.

f. On 15 September 1986, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 1 year, 7 months, and 25 days of active service with 111 days lost time. It also shows he was awarded or authorized the Army Service Ribbon and Expert Marksmanship Qualification Badge with Rifle Bar (M-16).

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. By regulation, an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

#### 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. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence of mitigating factors to overcome the misconduct of AWOL for 111 days. The Board noted the applicant provided no post-service achievements or character letters of support attesting to his honorable conduct 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 1 year, 7 months, and 25 days of active service with 111 days lost time. The Board agreed 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 a general under honorable conditions 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.

5/14/2024

X █  
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 CHAIRPERSON  
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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, 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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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. Paragraph 3-7b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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/NRs) 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 based on 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//