

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 April 2024

DOCKET NUMBER: AR20230010471

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to honorable and a personal appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record), 1 June 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 13 February 1986
- character statement, from [REDACTED] 22 May 2023
- character statement, from [REDACTED] 23 May 2023
- character reference, from [REDACTED] date unknown

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, during his service, he was going through a tough time within his marriage and with his military supervisors. His Commanding Officer denied his request for leave, although he had leave saved, which he needed to take leave to get his martial affairs in order. Due to his leave being denied, he was unable to reconcile with his spouse and was unable to spend time with his daughter. His time served in the military caused marital issues, which led to his divorce. He additionally states, he was not given an explanation or due process regarding his discharge and was told either take the discharge or go to jail.

3. The applicant enlisted in the Regular Army on 24 April 1984, for a 3-year period. He was awarded the military occupational specialty of 31K (Combat Signaler). The highest rank he attained was private first class/E-3.

4. Court-martial charges were preferred against the applicant on 21 January 1986, for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with two specifications of absenting himself without authority on or about 1 November 1985 until on or about 3 November 1985 and on or about 4 November 1985 until 20 January 1986.

5. The applicant consulted with legal counsel on 21 January 1986 and 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 UOTHC 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 in his own behalf.

(1) He stated the reason he went absent without leave (AWOL) was because for two years of being at his military station he was unable to take leave. He had 34 days of leave accumulated and was denied leave when he requested. When he requested leave or a pass to ensure he could square some issues up, it was denied.

(2) He talked to his chain of command to include his first sergeant and adjacent officer, after the mental health clinic strongly recommended, he went on leave, and his leave was denied, he decided to go AWOL.

(3) He was a Soldier who did not get into trouble, he always did what he was told and needed of him and had a lot of pride in his career. He requested a chance to finish the Army and get an honorable discharge.

6. On 31 January 1986, the applicant's commander recommended approval of the request for discharge under the provisions of AR 635-200, Chapter 10, and issuance of a UOTHC discharge. Additionally stating, the factual data was due to the applicant

being charged with two periods of AWOL totaling 79 days, ending when he was apprehended by civilian authorities.

7. On 4 February 1986, the separation authority approved the applicant's request for discharge for the good of the service and further directed the applicant receive an UOTHC discharge, and reduction to the lowest enlisted grade.

8. The applicant's DD Form 214 shows he was discharged on 13 February 1986, under the provisions of AR 635-200, Chapter 10, for the good of the service-in lieu of court martial, in the grade of E-1. He received an UOTHC characterization of service, a separation code of KFS, and reenlistment code of RE-3B. He was credited with 1 year and 7 months of net active service with time lost from 1 November 1985 to 2 November 1985, from 13 March 1985 to 14 May 1985, and from 4 November 1985 to 19 January 1986.

9. The applicant provides three-character references which summarize his character as hard working, a caregiver to his family, a respected man in the community, honest, reputable, and a person who treats others in a fair manner.

10. Discharges under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service from the Soldier to avoid a trial by court-martial. An UOTHC character of service is normally considered proper.

11. 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 misconduct of multiple AWOLS. The Board noted the applicant's post service achievements and found his character letters of support commendable attesting to his integrity, community support and his character.

2. The Board however, determined the applicant's service record exhibits numerous instances of AWOL and dropped from rolls during his enlistment period for 1 year and 7 months of net active service with three periods of time lost. The Board found 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 honorable discharge. Therefore, the Board denied relief.

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.

5/6/2024

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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 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.
3. 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 UOTHC discharge 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.
4. 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//