

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2024

DOCKET NUMBER: AR20230010494

APPLICANT REQUESTS: reconsideration of his previous request to upgrade of his under other than honorable conditions (UOTHC) discharge to honorable.

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 AR1999019007 on 11 March 1999.
2. The applicant states his discharge was one of unfairness, the facts in the case were based on racism. He was taunted by a white enlisted person with racial slurs. He was forced to engage the person for his own safety. He is a black male who wants justice; for his record to reflect the truth.
3. On 5 July 1977, the applicant enlisted in the Regular Army. Upon completion of initial entry training, he was awarded military occupational specialty 13B (Cannon Crewman). The highest grade he attained was E-3.
4. On 28 August 1978, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military control on 13 October 1978.
5. On 16 November 1978, the applicant received non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ), for going AWOL. His punishment included reduction to E-1, forfeiture of \$150.00 pay per month for two months, and 45 days restriction and extra duty.
6. Court-martial charges were preferred against the applicant on 12 January 1979, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with:

- one specification of committing an assault, likely to produce grievous bodily harm on or about 22 November 1978
- one specification of unlawfully striking a person in the face with his fist on or about 24 November 1978
- three specifications of wrongfully communicating a threat.

7. On 9 April 1979, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a bad conduct discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

b. He did not submit a statement in his own behalf.

8. On 18 April 1979, the applicant's commander recommended approval of his request for discharge, and further recommended the issuance of an UOTHC discharge. The commander noted it would be a waste of the U.S. Government's time to confine the applicant if convicted, because he didn't have the potential to be retained in the service.

9. On 24 April 1979, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.

10. By legal review on 1 May 1979, the applicant's Chapter 10, separation action was found to be legally sufficient for further processing.

11. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge, and directed his reduction to the lowest enlisted grade and issuance of a DD Form 794A (UOTHC Discharge Certificate).

12. The applicant was discharged accordingly on 25 May 1979. His DD Form 214 (Report of Separation from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC.

He was assigned Separation Code JFS and Reentry Code 3B. He completed 1 year, 9 months, and 6 days of net active service this period with 46 days of lost time.

13. The applicant petitioned the Army Discharge Review Board requesting upgrade of his UOTHC discharge. The Board voted to deny relief and determined his discharge was both proper and equitable.

14. The applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 11 March 1999, the Board voted to deny relief and determined he failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice.

15. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

16. 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 applicant was charged with commission of an offense (committing an assault, unlawfully striking a person in the face with his fist, and wrongfully communicating a threat) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. 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.

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 to amend the decision of the ABCMR set forth in Docket Number AR1999019007 on 11 March 1999.

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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 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 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

2. 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//