

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 May 2024

DOCKET NUMBER: AR20230010596

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

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

- DD Form 149 (Application for Correction of Military Record), 4 July 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 19 August 1983
- Occupational Safety and Health Administration (OSHA) student transcript
- OSHA certificates, from 13 November 2011 to 3 February 2012 (10)
- Certificate of Customer Service, 28 April 2016

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, it has been difficult obtaining Veterans preference when applying for a job, as he cannot receive a Veterans identification card. When applying for home loans it is difficult because he does not have Veterans assistance. He is requesting an upgrade to benefit his family; he regrets what he did while serving and it has caused him a lot of difficulty in life.
3. The applicant enlisted in the Regular Army on 24 November 1981. He was awarded the military occupational specialty of 95B (Military Police) and the highest rank he attained was private first class/E-3.
4. The applicant's immediate commander recommended a trial by a special court-martial empowered to adjudge a bad conduct discharge on 10 July 1983. The applicant's intermediate commander additionally recommended the applicant be tried by a special court-martial empowered to adjudge a bad conduct discharge.

5. A bad conduct discharge data sheet, dated 1 July 1983, shows the following:

a. The applicant had prior nonjudicial punishments for on or about 16 December 1982 wrongfully appropriating a U.S. Government leased telephone, his punishment imposed was 14 days extra duty. Additionally, on or about 10 March 1983 for failing to report, his punishment imposed was reduction to the grade of E-2 and 14 days extra duty.

b. His offenses involved larceny, damaging private property, and receiving stolen property.

c. The facts were that the applicant on or about 2 April 1983, while in Germany, with another Soldier, was playing with video machines which were owned by F.S., a German national. While playing, the idea came up to break into the machines and steal the money located therein. To accomplish that deed, the other Soldier secured a screwdriver and pried the machines open. While the other Soldier broke into the machines, the applicant sat on the stairs and watched. The other Soldier pried open two machines and removed a total of approximately 1,200.00 Deutsche Mark (DM). The other Soldier then placed the coins in a briefcase, and the applicant drove the other Soldier to the billets, where the other Soldier dropped off the briefcase. The two individuals returned to duty and after work, they returned to the billets, where the other Soldier gave the applicant about 600.00 DM of the stolen money.

d. The commanders, separation authority, trial counsel and staff judge advocate recommended a trial by special court-martial empowered to adjudge a bad conduct discharge.

6. The applicant consulted with legal counsel on or about 13 July 1983.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a bad conduct or dishonorable discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, under the provision of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge 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 acknowledged making this request free of coercion. He further acknowledged understanding if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the

Veteran's Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. He was advised he could submit any statements he desired in his behalf. He elected to not submit a statement on his own behalf.

d. The defense counsel additionally requested favorable consideration for the applicant's request for discharge for the good of the service.

7. On 18 July 1983, the applicant's immediate commander recommended approval of the applicant's request for discharge for the good of the service, with an issuance of a discharge UOTHC.

8. On 19 July and 25 July 1983, the applicant's intermediate commander's concurred with the immediate commander's recommendation for discharge with issuance of a discharge UOTHC.

9. The separation authority approved the applicant's request for discharge for the good of the service on 28 July 1983, further directing the applicant receive an UOTHC discharge and reduction to the lowest enlisted grade of private/E-1.

10. The applicant was discharged on 19 August 1983, under the provisions of AR 635-200, Chapter 10, for the good of the service, in the grade of E-1. His DD Form 214 confirms his character of service was UOTHC, with separation code JFS and reenlistment code RE-3, 3B, and 3C. He was credited with 1 year, 8 months, and 26 days of net active service.

11. The applicant provides his OSHA student transcript showing his professional certificate program with various courses taken. Ten OSHA certificates showing his successful completion of all assignment and final exam requirements earned. Additionally, a certificate of course completion for customer service.

12. 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.

13. 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 larceny and destruction of property. Under liberal consideration the Board noted the applicant post service accomplished and OSHA certifications since his discharge. The Board also noted, the applicant provided no character letters of support for the Board to weigh a clemency determination.

2. Additionally, the Board found the applicant's service record exhibits instances of misconduct during his enlistment period for 1 year, 8 months, and 26 days of net active service. 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.

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]

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[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, 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), the regulation governing this Board, states 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, 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//