

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 16 April 2024

DOCKET NUMBER: AR20230010633

APPLICANT REQUESTS: presumably, an upgrade of his under other than honorable conditions (UOTHC) character of service.

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

- DD Form 149 (Application for Correction of Military Record), with self-authored statement
- Standard Form (SF) 180 (Request Pertaining to Military Records), 8 May 2023
- Identification Card, State of Texas, date illegible
- Social Security Card, 27 July 2022

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, he was discharged because he and his Battery Commander had some problems. When he was on temporary duty at the hospital, the commander's wife had a baby. The commander asked him if he was taking good care of his baby. He responded, "With all due respect, I'm not working with your baby because you and I don't see eye to eye." After that, he went absent without leave (AWOL). When he returned, he was forced to take an under other than honorable discharge. He could not cope with military life.

3. The applicant enlisted in the Regular Army on 12 June 1979, for a 3-year period. Upon the completion of initial entry training, he was awarded military occupational specialty 91B (Medical Specialist). The highest rank he attained was private/E-2.

4. Three DA Forms 4187 (Personnel Action) show the following changes in the applicant's duty status:

- In transit to AWOL, on 11 October 1979

- AWOL to Dropped from Rolls (DFR), on 9 November 1979
- DFR to Present for Duty (PDY), surrendered to unit, on 25 November 1979

5. Before a summary court-martial, at Fort Sill, OK, on 11 June 1980, the applicant pled guilty to and was found guilty of being AWOL on or about 6 March 1980 until on or about 17 May 1980. He was sentenced to reduction to private/E-1, forfeiture of \$300.00 pay, and confinement at hard labor for 30 days. Only as much of the sentence that provided for reduction to private/E-1, forfeiture of \$290.00 pay, and confinement at hard labor for thirty days was approved and ordered duly executed on 17 June 1980.

6. Seven DA Forms 4187 show the following changes in the applicant's duty status:

- PDY to AWOL, on 6 March 1980
- AWOL to DFR, on 4 April 1980
- DFR to Confined by Military Authorities, apprehended by Military Police, on 17 May 1980
- PDY to Confined by Military Authorities, on 11 June 1980
- Confined by Military Authorities to PDY, on 3 July 1980
- PDY to AWOL, on 7 July 1980
- AWOL to Confined by Military Authorities, surrendered to Military Police, on 7 August 1980
- Confined by Military Authorities to PDY, on 7 August 1980

7. The applicant's service record is void of the complete facts and circumstances surrounding his discharge. However, the applicant was discharged on 10 October 1980, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, by reason of administrative discharge – conduct triable by court-martial. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his character of service was UOTHC, with separation code JFS and reenlistment code RE-3B. He was credited with 11 months, and 4 days of net active service, with lost time from 11 October 1979 to 24 November 1979, 6 March 1980 to 16 May 1980, and 7 July 1980 to 6 August 1980.

10. The applicant provides:

a. An SF Form 180, dated 8 May 2023, which shows the applicant submitted a request for his service records from the National Archives and Records Administration.

b. A copy of a Social Security card and a State of Texas identification card, which is illegible, presumably belonging to the applicant.

11. Administrative separations under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

12. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination 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 clearly charged with commission of an offense punishable under the UCMJ with a punitive discharge. After being charged, he presumably 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. Also, 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:

<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]

[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, USC, 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) prescribes the policies and procedures for the correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation states, the ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and

decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.

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 discharge under other than honorable conditions 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.

//NOTHING FOLLOWS//