

IN THE CASE OF: ██████████

BOARD DATE: 17 April 2024

DOCKET NUMBER: AR20230010694

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

APPLICANT'S SUPPORTING DOCUMENT CONSIDERED BY THE BOARD:

DD Form 149 (Application for Correction of Military Record)

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 had a perfect record as a noncommissioned officer for his entire enlistment until he had some financial problems that led to a bar to reenlistment. He received reassignment orders for Hawaii, it was a 3-year accompanied tour and he only had 2 years left on his term of enlistment. Due to his bar to reenlistment, he could not extend or reenlist to take his wife and two children. He went to his battalion and brigade commanders, but there was nothing they could do to resolve the situation. They had no money, and he could not leave them behind because they had nowhere to go. So, he got a job and supported his family on his own. He was young and believed it was the best way forward. He was absent without leave (AWOL) for 59 days and decided to return to Fort Knox, KY, and see what could be done. He was told because of his clean record they would discharge him for the good of the service. He did not really understand what that meant at the time, but he was released to go home. About three months later, he received his UOTHC discharge in the mail. He received an Honorable Discharge for his first enlistment and thought after all these years he should at least try to have his discharge UOTHC upgraded.
3. On 9 November 1978, the applicant enlisted in the Regular Army for a period of 3 years. Upon completion of training, he served in units in Korea; Fort Campbell, KY; Korea; and ultimately Fort Knox, KY. He was promoted to the rank/pay grade of sergeant (SGT)/E-5 effective 1 March 1981, the highest rank he held while serving.

4. On 11 May 1981, the applicant reenlisted for a period of 6 years.
5. The applicant's unit changed his duty status as follows:
 - Present for Duty (PDY) to AWOL on 6 September 1984
 - AWOL to Dropped from Rolls (DFR) on 5 October 1984
 - DFR to Attached (ATCH)/PDY on 9 October 1984 when he surrendered at the military police station at Fort Knox, KY and returned to military control
 - PDY to AWOL to DFR on 11 October 1984
 - DFR to ATCH/PDY on 22 January 1985 when he surrendered to military authorities at Fort Knox and returned to military control
6. A DD Form 458 (Charge Sheet) shows on 28 January 1985, court-martial charges were preferred against the applicant for violation of Article 86 of the Uniform Code of Military Justice (UCMJ) for being AWOL from on or about 6 September 1984 until on or about 9 October 1984, and from on or about 11 October 1984 until on or about 22 January 1985.
7. On 29 January 1985, 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 lieu of trial by court-martial. He consulted with legal counsel and was advised of the basis for the trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him. He elected not to submit a statement in his own behalf.
8. The applicant's immediate and intermediate commanders recommended approval of his request with a discharge UOTHC.
9. On 4 March 1985, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial, with his service characterized as UOTHC. He also directed the applicant be reduced to E-1.
10. Orders show the applicant was reduced from SGT/E-5 to Private/E-1 effective 4 March 1985.
11. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged on 28 March 1985, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "For the Good of the Service - In Lieu of Court-Martial" with Separation Program Designator code "KFS" and Reenlistment code "3, 3B, and 3C." He was credited with completing 6 years and 6 days of net active service this period. He had lost time due to AWOL from 6 September 1984 to 8 October 1984 and from 11 October 1984 to 21 January 1985.

12. Item 18 (Remarks) of his DD Form 214 shows he had an immediate reenlistment on 11 May 1981, but does not depict his period of honorable service from 9 November 1978 until 10 May 1981 (see Administrative Notes).

13. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. In doing so, he would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

14. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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 being AWOL. 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 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. However, during deliberation the Board found the applicant's DD Form 214 did not reflect his continuous honorable service for the period of 9 November 1978 to 10 May 1981. Therefore, the Board granted partial relief to correct the applicant's DD Form 214 and annotate in block 18 his continuous honorable service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 17 January 1992. As a result, amend item 18 of the DD Form 214 by:

- deleting the entry "IMMEDIATE REENLISTMENT THIS PERIOD: 810511

adding the entries:

- "IMMEDIATE REENLISTMENT THIS PERIOD – 19781109-19810510"
- "CONTINUOUS HONORABLE SERVICE FROM 19781109-19810510"

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an upgrade of his discharge under other than honorable conditions (UOTHC).

4/19/2024

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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.

ADMINISTRATIVE NOTES:REFERENCES:

1. Title 10, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.
3. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.
 - 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.
 - d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

4. Army Regulation 635-5 (Personnel Separations – Separation Documents), in effect at the time, prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes the standardized policy for preparing and distributing the DD Form 214. It states the DD Form 214 provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

a. Paragraph 1-4b(5) of the regulation in effect at the time stated that a DD Form 214 would not be prepared for enlisted Soldiers discharged for immediate reenlistment in the Regular Army.

b. Paragraph 2-4h(18) of the regulation currently in effect states that item 18 documents the remarks that are pertinent to the proper accounting of the separating Soldier's period of service. Subparagraph (c) states that for enlisted Soldiers with more than one enlistment period during the time covered by the DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify the appropriate dates. For Soldiers who have previously reenlisted without being issued a DD Form 214 and who are later separated with any characterization of service except "honorable," enter "CONTINUOUS HONORABLE ACTIVE SERVICE FROM" (first day of service which DD Form 214 was not issued) UNTIL (date before commencement of current enlistment)." Then, enter the specific periods of reenlistments as prescribed above.

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, 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//