

IN THE CASE OF: ██████████

BOARD DATE: 2 May 2024

DOCKET NUMBER: AR20230011224

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

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

- Self-Authored Letter Request for Reconsideration
- AR20220007380 Record of Proceedings
- AR20220007380 Letter to Applicant
- Character Reference Letters
- Letters to ██████████ Superior Court
- Annual Charitable Cash Contributions
- Letters from Doctor
- Letter from the Church of Jesus Christ of Latter-Day Saints
- Baptism and Confirmation Certificate
- Melchizedek Priesthood Ordination Certificate
- Aaronic Priesthood Ordination Certificate
- Foster, Adoptive and Kinship Care Education Program Certificate of Completion
- East County Regional Recovery Center Certificate of Completion
- Outpatient Counseling Certificate of Completion
- Parent Engagement and Self Advocacy Training Certificate

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 AR20220007380 on 3 February 2023.
2. The applicant states he is writing the Board with new letters of support by his brother and evidence of positive achievements in his life. He is also including one handwritten letter from his close friend ██████████ who is retired from the Navy, as evidence of the applicant's character and loyalty to the country. He also included evidence of his failing health. He would very much like to ask the Board for a reconsideration of its prior decision, and based on new evidence grant him an honorable discharge.

3. The applicant provides the following documents:

a. Character reference letters, which state:

(1) From █████ who has known the applicant for over 10 years and found him to be honest, loyal, and a law abiding citizen who █████ trusts completely.

(2) From Bishop █████ who knows the applicant through the Church of Jesus Christ of Latter-Day Saints. The applicant was baptized in 2011. The applicant knew his life was headed in the wrong direction and realized he needed to change and become a better person. The applicant has regularly attended his church meetings, has performed many acts of service to the church and fellow members, and has shown himself to be an honest hard-working individual who cares about his family greatly. The applicant was ordained an Elder in the church on 22 September 2013. The entire letter is available for the Board's consideration.

(3) From █████ who became acquainted with the applicant and his wife about 10 years ago. The author was touched by the sincerity of the applicant's inquiries and direct nature of their faith. It was clear that a decision had been made to choose a better path. The author has learned the applicant and his wife are undeterred in their commitment to follow the teachings of Jesus Christ. The entire letter is available for the Board's consideration.

(4) From █████ the applicant's brother. The applicant was raised in a military family. He grew up in a loving home with three sisters, one older brother, and both of his parents. The applicant's trouble began at his duty station of Fort Sam Houston. The applicant began having trouble with some black gang members. It began with name calling and then threats to cut off the applicant's tattoo. The applicant talked to his noncommissioned officer who told him to do nothing and it would go away. The threats continued with no one addressing the problem. The applicant talked to his brother about going absent without leave (AWOL) because he had talked to his chain of command about the situation and nothing was done. The applicant felt trapped with no direction to turn. The applicant ended up going AWOL and ended up getting a job. His brother talked him into turning himself in. Since returning to civilian life, the applicant has turned his life around. The applicant has done remarkable things since the military and seems to continue to grow with his family, friends, and his faith. The entire letter is available for the Board's consideration.

(5) From █████ who has known the applicant and his wife for approximately six years. The applicant and his wife are very much in control of their actions and not easily frustrated or angered. They are dedicated and consistent church attendees, taking every opportunity to be present and punctual. The author believed their characters to be honest, friendly, easy going, tolerant, and respectful to difficult people and many other

good qualities. The author whole heartily advocated their character based on their reliability and trustworthiness. The entire letter is available for the Board's consideration.

b. Letters [REDACTED] Superior Court state:

(1) From [REDACTED] who was asked to check on the applicant's house, while he was away for the holidays. The applicant's wife's children remained at the house and left the house in disarray. The applicant and his wife lived below the poverty level and did their best to maintain their home. Because of the children's laziness, foul mouths, and destructiveness the applicant had permanent stains on his brand new carpet and no longer had a couch. The entire letter is available for the Board's consideration.

(2) From [REDACTED] who met the applicant and his wife in church. The author had seen personal growth through faith, commitment, and trial by fire. The entire letter is available for the Board's consideration.

c. A document which shows the applicant's annual charitable cash contributions to the Church of Jesus Christ of Latter-Day Saints.

d. Letters from the applicant's doctor which state:

(1) The applicant has been under the doctor's care and treatment for a permanent disabling medical illness and required the assistance of a therapeutic companion dog.

(2) The applicant and his wife have been under the doctor's care for Major Depression and Anxiety since 2012 and are followed on a regular basis. In addition, both the applicant and his wife suffer from COPD and use CPAP machines to treat their lung disorder. In addition to the applicant's chronic lung disease, he also suffers from seizures and requires his wife's assistance.

(3) The applicant had a history of chronic recurrent seizures that were debilitating. He also has severe lapses of memory particularly after a seizure event.

e. Letter from the Church of Jesus Christ of Latter-Day Saints congratulating the applicant on his baptism and confirmation with the church. The entire letter is available for the Board's consideration.

f. Baptism and Confirmation Certificate shows the applicant was baptized and confirmed on 6 August and 7 August 2011.

g. Melchizedek Priesthood Ordination Certificate shows the applicant was ordained to the office of Elder in the Melchizedek Priesthood on 22 September 2013.

h. Aaronic Priesthood Ordination Certificate shows the applicant was ordained to the office of Priest in the Aaronic Priesthood on 21 August 2011.

i. Foster, Adoptive, and Kinship Care Education Program Certificate of Completion shows the applicant successfully completed Teamwork Toward Permanency Sessions on 15 September and 22 September 2009.

j. East County Regional Recovery Center Certificates of Completion shows the applicant completed the 14 week Parenting Education course on 19 March 2009 and the Outpatient Counseling Program on 17 August 2009.

k. Certificate showing the applicant completed the Parent Engagement and Self Advocacy Training on 24 April 2009.

4. The applicant's service record contains the following documents:

a. A DD Form 4 (Enlistment or Reenlistment Document - Armed Forces of the United States) shows the applicant enlisted in the Regular Army and entered active duty on 21 March 1978.

b. A DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice) shows the applicant, in the rank of private/E-1, accepted nonjudicial punishment on 30 August 1978 for being AWOL from on or about 2 August 1978 to on or about 17 August 1978 and for disrespect to a superior commissioned officer. His punishment included forfeiture of \$125. The applicant did not appeal his punishment.

c. A Standard Form 88 (Report of Medical Examination), dated 22 March 1979 shows the applicant had no medical or mental health issues and was qualified for separation. His Standard Form 93 (Report of Medical History) shows he was in good health.

d. A DD Form 458 (Charge Sheet), dated 22 March 1979 shows the applicant's commander preferred a charge of AWOL from on or about 14 September 1978 to on or about 19 March 1979 against the applicant.

e. A document from the applicant's defense counsel, dated 23 March 1979 explained the charge against the applicant and the consequences of the applicant requesting discharge in lieu of court-martial.

f. Memorandum subject Request for Discharge for the Good of the Service, dated 23 March 1979, shows the applicant consulted with legal counsel and voluntarily requested to be discharged under the provisions of Army Regulation (AR) 635-200

(Personnel Separations – Active Duty Enlisted Administrative Separations), chapter 10. Legal counsel advised him of the basis for his contemplated trial by court-martial and the maximum permissible punishment authorized under the Uniform Code of Military Justice; of the possible effects of a discharge UOTHC if the request was approved; of the procedures and rights available to him, and of his right to submit statements in his own behalf. The applicant declined to submit statements in his own behalf.

g. DA Form 3082 (Statement of Medical Condition), dated 27 March 1979 states there had been no change in the applicant's medical condition.

h. The applicant's chain of command recommended approval of the applicant's request for discharge with issuance of an UOTHC characterization of service. Sometime after 23 March 1979, the appropriate approval authority approved the applicant's request for discharge and directed he be issued an UOTHC discharge.

i. A DD Form 214 (Report of Separation from Active Duty) shows on 18 April 1979 the applicant was discharged under the provisions of AR 635-200, Chapter 10, and issued an UOTHC discharge. He had completed 6 months and 7 days of active duty service. He had 201 days lost. He had 23 days of excess leave from 27 March 1979 through 18 April 1979 and was AWOL from 2 August 1978 through 16 August 1978 and 14 September 1978 through 18 March 1979.

5. On 21 April 2022, the applicant petitioned the Board for an upgraded discharge. On 3 February 2023, the Board denied his request stating after reviewing the application and all supporting documents and the evidence found within the military record, the Board determined that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the frequency and nature of the misconduct, period of AWOL, the reason for separation and whether to apply clemency. The Board noted the applicant's reference to being actively involved with his church; however, other than his brother's reference, he provided no evidence of post-service achievements or letters of reference to weigh in support of a clemency determination. Based on a preponderance of evidence available for review, the Board determined the character of service the applicant received upon separation was not in error or unjust.

#### BOARD DISCUSSION:

The Board again carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason

for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and found the evidence of post-service achievements and letters of support the applicant provided insufficient to support clemency. The Board specifically noted the very brief period of service marred by an extended period of AWOL as a basis for denying relief. Based on a preponderance of the evidence, the Board determined 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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20220007380 on 3 February 2023.

9/16/2024

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CHAIRPERSON  
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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. 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 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to AD.

d. A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued in lieu of trial by court martial.

e. A Soldier who requests discharge as prescribed in chapter 10 may be discharged under other than honorable conditions if he/she has been afforded the opportunity (not less than 72 hours) to consult with a consulting counsel.

(1) The Soldier must certify in writing that he/she understands that he/she may receive a discharge under other than honorable conditions.

(2) The Soldier must understand the adverse nature and possible consequences of such a discharge.

(3) The Soldier must personally sign a request for discharge. A conditional request is not permitted.

(4) The consulting counsel will sign as a witness, indicating that he/she is a commissioned officer of The Judge Advocate General's Corps. A Soldier may waive

consultation with a consulting counsel. Counsel will prepare a statement to this effect that will be attached to the file; the Soldier will state that the right to counsel has been waived.

f. A Soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the Manual for Courts-Martial includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.

3. AR 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code JFS is used for discharge In Lieu of Trial by Court-Martial.

4. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

5. 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/NRs) 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.

6. Clemency guidance to the Boards for Correction of Military/Navy Records (BCM/NR) does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority to ensure each case will be assessed on its own merits. In determining whether to grant relief 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. This includes consideration of changes in policy, whereby a service member under the same circumstances today would reasonably be expected to receive a more favorable outcome.

//NOTHING FOLLOWS//