

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 May 2024

DOCKET NUMBER: AR20230011245

APPLICANT REQUESTS: 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
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 13 May 1983
- Certificate of Marriage, dated [REDACTED]
- Associates of Applied Science, Automotive Technology, Bay de Nor Community College, dated 10 May 1991
- Official Graduate School Academic Record, [REDACTED], 14 December 2002
- Professional Teaching Certificate, State [REDACTED], issued 14 January 2002
- Army Service Records (146 pages), dated 9 June 1987 to 1-September 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 1983 was the low point in his life. For 36 years he has focused on being the Soldier he was not mature enough to be at 17 and 18 years of age. He drilled for no pay for his initial enlistment in [REDACTED] Army National Guard ([REDACTED] ARNG) to erase the Federal debt he incurred upon his discharge; he did everything he could to show he was a good Soldier; he spent three separate years mobilized in support of the Global War on Terrorism, which made him a better teacher. He was surprised to learn about the Under Secretary of Defense's memorandum, dated 20 July 2018, naming "clemency" as a factor warranting a discharge review and possible upgrade. He believes his accomplishments in the [REDACTED] ARNG, U.S. Army Reserve

(USAR), and his civilian and personal life are significant enough to warrant the Board's consideration. As of the date of his application, the applicant was serving in the USAR.

3. The applicant enlisted in the Regular Army on 1 July 1982 for a 4-year period. Upon completion of initial entry training, he was awarded military occupational specialty 11B (Infantryman). The highest rank he attained was private/E-1.

4. A Standard Form (SF) 600 (Health Record – Chronological Record of Medical Care) shows the applicant was command referred for a mental health evaluation on 26 July 1982. The medical note states the mental status exam was within normal limits, and [the applicant] desired to be discharged from the military.

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

- Present for Duty (PDY) to Absent Without Leave (AWOL) on 22 March 1983
- AWOL to PDY, surrendered to unit, on 31 March 1983
- PDY to AWOL, on 3 April 1983
- AWOL to PDY, on 13 April 1983
- PDY to AWOL, 20 April 1983
- AWOL to PDY, surrendered to unit, on 30 April 1983

6. Court-martial charges were preferred against the applicant on 2 May 1983 for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows he was charged with three specifications of being AWOL, on or about 22 March 1983 until on or about 31 March 1983, on or about 3 April 1983 until on or about 13 April 1983, and on or about 20 April 1983 until on or about 30 April 1983.

7. The applicant's service record is void of the complete facts and circumstances surrounding his discharge. However, the applicant was discharged on 13 May 1983, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service-in lieu of court-martial. His DD Form 214 confirms his character of service was UOTHC. He was credited with 9 months and 14 days of net active service.

8. The applicant provides the following:

- a. A copy of his Marriage Certificate, dated [REDACTED]
- b. Civilian education documents which show the award of his Associates of Applied Science in Automotive Technology on 10 May 1991, a Bachelor of Science on 6 May 1995, a Master of Education on 14 December 2002, and his Professional Teaching Certification issued on 14 January 2022.

c. 146 pages of records from his service in the ■■■ ARNG and USAR to include:

- ■■■ ARNG enlistment waiver documents, dated 9 June 1987
- 15 years of honorable service in the ■■■ ARNG, from 29 July 1987 until 28 August 2002
- three periods of honorable active duty service in support of Operations Noble Eagle and Enduring Freedom with the USAR, from March 2003 to September 2008
- promotion orders through the rank/grade of master sergeant/E-8
- multiple military training certificates and DA Forms 1059 (Service School Academic Evaluation Report)
- multiple awards and commendations to include the Meritorious Service Medal, Army Commendation Medal (3), Army Achievement Medal (3), and numerous marksmanship awards
- 34 Noncommissioned Officer Evaluation Reports show his evaluations and ratings from February 1992 through 1 September 2002

9. 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.

10. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. 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 applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation in 1983, and whether to apply clemency.

2. The Board found the applicant's achievements in public service and as a member of the ARNG and USAR subsequent to his discharge in 1983 support clemency. Based on a preponderance of the evidence, the Board determined the character of service the applicant received in 1983 should be changed to under honorable conditions (general).

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 for the period ending 13 March 1983 to show his character of service as under honorable conditions (general).

9/24/2024

X

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.

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 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//