

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 May 2024

DOCKET NUMBER: AR20230011298

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) character of service to under honorable conditions (general).

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

DD Form 149 (Application for Correction of Military Record)

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 AR1999014606 on 27 January 1999.
2. The applicant states upon completing basic training, he was notified of a pressing situation at home pertaining to his wife. He and his drill instructor spoke with the commander to request a few days of leave. The commander stated, "If the Army wanted you to have a family, they would have issued you one." In his duress, he went absent without leave (AWOL). The military was his life, pride, and duty. He should have handled things differently and regrets his actions.
3. Following his enlistment in the Army National Guard, the applicant was ordered to active duty for the completion of initial entry training. A DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows the applicant was honorably released from active duty and returned to the Army National Guard of Indiana on 15 May 1964. He was credited with 20 days of net active service this period.
4. A National Guard Bureau (NGB) Form 22 (NGB – Report of Separation and Record of Service) shows the applicant was honorably discharged from the Army National Guard of Indiana on 18 May 1964. He was credited with 7 months and 18 days of service.

5. The applicant enlisted in the Regular Army on 27 February 1970, for a 3-year period. The highest rank he attained was private/E-2. He was not awarded a military occupational specialty.
6. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 20 May 1970, for failure to go at the time prescribed to his appointed place of duty, on or about 18 May 1970. His punishment consisted of 7 days in correctional custody.
7. A Military Police Report, dated 16 September 1970, shows the applicant was reported AWOL on 21 May 1970 and subsequently dropped from the rolls on 19 June 1970. He was apprehended on 8 September 1970 and returned to military control on 16 September 1970.
8. The applicant underwent a pre-separation medical examination on 21 September 1970. The examining provider determined he was medically qualified for separation.
9. Court-martial charges were preferred against the applicant on 21 September 1970 for a violation of the UCMJ. The relevant DD 458 (Charge Sheet) shows he was charged with being AWOL, from on or about 21 May 1970 until on or about 8 September 1970.
10. The applicant consulted with legal counsel on 22 September 1970.
 - a. He was advised of the basis for the contemplated 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.
 - b. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service - in lieu of trial by court-martial. He further acknowledged he understood that 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 Veterans 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 not to submit a statement.
11. The applicant's immediate commander recommended approval of the request for discharge for the good of the service on 25 September 1970. The commander further recommended the issuance of an Undesirable Discharge Certificate.

12. The separation authority approved the applicant's request for discharge in lieu of court-martial on 7 October 1970, directed the applicant be reduced to the lowest enlisted grade, and the issuance of a DD Form 258A (Undesirable Discharge Certificate).

13. Accordingly, the applicant was discharged on 7 October 1970, under the provisions of AR 635-200, Chapter 10, for the good of the service. His DD Form 214 confirms his service was characterized as UOTHC. He was credited with 3 months and 13 days of net active service, with 118 days of lost time.

14. The ABCMR reviewed the applicant's petition for an upgrade of his discharge on 27 January 1999. After careful consideration, the Board determined there was insufficient evidence to grant relief. His request for an upgrade of his characterization of service was denied.

15. Discharges 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. A UOTHC characterization of service is normally considered appropriate.

16. The Board should consider the applicant's statement and provided evidence in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, 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 the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. 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:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF
: : : GRANT PARTIAL RELIEF
: : : GRANT FORMAL HEARING
[REDACTED] [REDACTED] [REDACTED] 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 AR1999014606 on 27 January 1999.

9/24/2024

CHAIRPERSON
[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. 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.

2. 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) on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//