

IN THE CASE OF: [REDACTED].

BOARD DATE: 16 May 2024

DOCKET NUMBER: AR20230011314

APPLICANT REQUESTS: in effect,

- an upgrade of his discharge under other than honorable conditions (UOTHC)
- restoration of his rank/grade to sergeant (SGT)/E-5

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the review of Discharge from the Armed Forces of the United States)
- DD Form 256A (Honorable Discharge 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 AR20120018405 on 25 April 2013.
2. The applicant states he was not advised by his commander that a reduction in rank/grade from SGT/E-5 to private (PV1)/E-1 was part of his separation process.
3. On 8 March 1978, the applicant enlisted in the Regular Army for a period of 3 years. Upon completion of initial entry training, he was assigned to unit at Madigan Army Medical Center, Tacoma WA. He reenlisted on 18 February 1981 for a period of 3 years and was promoted to specialist fifth class (SP5)/E-5 on 1 December 1981.
4. The applicant was reassigned to Fort Lewis, WA on 9 December 1982. On 21 November 1983, he reenlisted for a period of 3 years and was subsequently reassigned to Germany. He was promoted to SGT/E-5 on 3 October 1985.
5. Court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ). However, the relevant DD Form 458 (Charge Sheet) is not available for review.

6. On 13 October 1988, 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 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 indicated he would submit statements in his own behalf with this request, but they are not present in his available record. He was advised him of the possible effects of a discharge UOTHC and the procedures and rights available to him. The applicant elected to submit a statement in his own behalf; however, a statement is not available in the record.
7. The applicant's chain of command recommended approval of the request for discharge. On 7 November 1988, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial, with his service characterized as UOTHC. He further directed the applicant's reduction to the lowest enlisted grade.
8. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged on 17 November 1988, in the grade of E-1, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. He was credited with completing 10 years, 8 months, and 10 days of net active service this period.
9. His DD Form 214 does not show his continuous period of honorable service (see Administrative Notes).
10. Army Regulation 635-200, Chapter 10, provides for 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.
11. 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:

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 charges against him that led him to request discharge in lieu of trial by court-martial are not included in the available records, and the Board found insufficient evidence of in-service mitigating factors. 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 and the related reduction to the lowest enlisted grade were not in error or unjust. The Board concurred with the corrections described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

Other than the corrections addressed in Administrative Note(s) below, the Board determined 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 AR20120018405 on 25 April 2013.

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.

ADMINISTRATIVE NOTES:

A review of the applicant's record shows his DD Form 214, for the period ending 17 November 1988, is missing an important entry that may affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding in item 18 (Remarks): "MEMBER HAS COMPLETED FIRST FULL TERM OF SERVICE//CONTINUOUS HONORABLE SERVICE FROM 780308-861120."

REFERENCES:

1. 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.

2. 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.

3. 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//