

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 May 2024

DOCKET NUMBER: AR20230011444

APPLICANT REQUESTS: in effect, an upgrade of his under other than honorable conditions (UOTHC) characterization of service.

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

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 was intimidated by his chain of command. He requested help and advice from his leadership, and they never gave him the opportunity.
3. The applicant enlisted in the Puerto Rico Army National Guard (PRNG) on 28 April 2000. A memorandum from the PRNG Language Center, dated 11 December 2000, shows the applicant was disenrolled from the Pre-Basic Combat Training (BCT) Language Course due to academic failure. He was returned to the Transition Company pending discharge from the PRNG.
4. A National Guard Bureau (NGB) Form 22 (NGB Report of Separation and Record of Service) shows the applicant was discharged from the PRNG on 21 December 2000, by reason of entry level performance and conduct. His service was uncharacterized. He was credited with 7 months and 24 days of net service.
5. The applicant enlisted in the Regular Army on 31 July 2002 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-2.

6. Two 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 30 June 2003
- AWOL to Dropped from Rolls (DFR) on 30 July 2003

7. A DD Form 616 (Report of Return of Absentee), dated 15 December 2003, shows the applicant surrendered to military authorities at Fort Buchanan, Puerto Rico, on that same date. In an accompanying sworn statement, the applicant stated he went AWOL because he did not want to jump anymore, and he did not know enough English.

8. The applicant's duty status changed from DFR to PDY on 19 December 2003.

9. Court-martial charges were preferred against the applicant for a violation of the Uniform Code of Military Justice on 12 January 2004. The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL, from on or about 30 June 2003 until on or about 19 December 2003.

10. Subsequently, the applicant consulted with legal counsel.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, in lieu of trial by court-martial, under the provision of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. In his request for discharge, he acknowledged understanding that by requesting discharge, he was admitting guilt to the charges against him, or of lesser included offenses that also authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged making this request free of coercion. He further acknowledged understanding that if his discharge request was approved, he could be deprived of many or all Army benefits, ineligible for many or all benefits administered by the Department of Veterans Affairs and deprived of his rights and benefits as a Veteran under both Federal and State laws.

c. He was advised that he may submit any statements he desired in his own behalf. There is no accompanying statement available in the applicant's service record. He elected not to request a separation physical.

11. The applicant's immediate and intermediate commanders recommended approval of his request for discharge in lieu of trial by court-martial and further recommended a service characterization of UOTHC.

12. The separation authority approved the applicant's request for discharge on 30 January 2004. He directed the applicant be reduced to the lowest enlisted grade and the issuance of an UOTHC characterization of service.

13. The applicant was discharged on 2 March 2004, under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. His DD Form 214 (Certificate of Release or Discharge from Active Duty) and corresponding DD Form 215 (Correction to DD Form 214) confirm he was discharged in the rank/grade of private/E-1, with a UOTHC character of service, and separation code KFS. He was credited with 1 year, 7 months, and 2 days of net active service. He was awarded or authorized the following:

- National Defense Service Medal
- Army Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle Bar
- Parachutist Badge

14. 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 trial by court-martial. A UOTHC characterization of service is normally considered appropriate.

15. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was/was not warranted.

2. The applicant did not even make it through the English as a second language class and the Army signed him up for; he went AWOL for 6 months and got dropped from rolls. The Board could not find any error or injustice.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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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, 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 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. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that 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.

3. 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//