

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 28 June 2024

DOCKET NUMBER: AR20230011481

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 is requesting an upgrade to his character of service from UOTHC to something better, due to a mistake that was made on item 21 (Time Lost) of his DD Form 214 (Report of Separation from Active Duty). He states that the 26 days of absent without leave (AWOL) was instead 8 hours of leave.
3. The applicant's service records show:
  - a. DD Form 4 (Enlistment or Reenlistment Agreement - Armed Forces of The United States) shows he enlisted in the Regular Army on 6 August 1975.
  - b. DA Forms 4187 (Personnel Action Form) reflects the following changes in the applicant's duty status:
    - 17 February 1976, present for duty (PDY) to absent without leave (AWOL)
    - 24 February 1976, AWOL to PDY
    - 5 April 1976, PDY to AWOL
    - 8 April 1976, AWOL to PDY
  - c. Summary Court-Martial Order Number 23, dated 26 May 1976, shows he was arraigned and tried before a Summary Court-Martial on 5 January 1976 at Fort Hood,

TX. He was sentenced to a 30-day restriction, forfeiture of pay of \$180 for one month, and reduction to private (E-1). The sentence was adjudicated on 18 May 1976. He pled guilty and was found guilty of the Charge: Violation of the Uniform Code of Military Justice, Article 86. He pled guilty and was found guilty of all specifications, as follows:

(1) Specification 1: On or about 0900 hours 7 February 1976, without authority, he failed to go at the time prescribed to his appointed place of duty, to wit: company formation.

(2) Specification 2: On or about 0700 hours 17 February 1976, without authority, absent himself from his unit and did remain so absent until on or about 1150 hours on 24 February 1976.

(3) Specification 3: On or about 0700 hours 5 April 1976, without authority, absent himself from his unit and did remain so absent until on or about 0600 hours on 8 April 1976.

d. DA Forms 4187 (Personnel Action Form) reflects the following changes in the applicant's duty status:

- 2 July 1976, PDY to AWOL
- 6 July 1976, AWOL to PDY
- 8 July 1976, PDY to AWOL
- 20 July 1976, AWOL to PDY

e. DA Form 2627 (Record of Proceedings Under Article 15, UCMJ) dated 16 August 1976, shows he received nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for failing to go at the time prescribed to his appointed place of duty, violation of Article 86. His punishment consisted of forfeitures of pay in the amount of \$84.00, 14 days restriction and extra duty. He appealed. The battalion commander after consideration of all matters presented in the appeal, ordered the forfeitures of pay in the amount of \$84.00 for one month be set aside.

f. The complete facts and circumstances surrounding his discharge are not available for review. However, his DD Form 214 shows he was discharged with an UOTHC characterization of service on 28 October 1976 pursuant to Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He received a separation code of "JFS" and a reenlistment code of "3" and "3B". He completed 1 year, 1 month, and 27 days of active service. He had lost time from 17 February 1976 to 23 February 1976, 5 April 1976 to 7 April 1976, 2 July 1976 to 5 July 1976 and 8 July 1976 to 19 July 1976.

4. There is no indication he petitioned the Army Discharge Review Board for review of his discharge processing within that board's 15-year statute of limitations.
5. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

**BOARD DISCUSSION:**

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found 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 liberal consideration of discharge upgrade requests. The applicant was charged with an offense punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.



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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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.

3. Army Regulation AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. 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.

b. 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, MSO, or period for which called or ordered to active duty.

c. Chapter 10 of that regulation provided, in pertinent part, that a member who had committed an offense or offenses for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate. A soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the Manual for Courts-Martial, 2002 (MCM 2002), includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.

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/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. 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 based on 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. 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//