

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 May 2024

DOCKET NUMBER: AR20230011489

APPLICANT REQUESTS: in effect,

- upgrade of his discharge under other than honorable conditions (UOTHC) to an honorable discharge
- the narrative reason for his separation and corresponding Separation Program Designator (SPD) code be amended to reflect a presumably more favorable reason

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 214 (Certificate of Release or Discharge from Active Duty)
- Character Reference Letters (3)

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 has had a change in character which would be better reflected with an honorable discharge.

3. On 24 April 1984, 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 Fort Ord, CA. He was promoted to private first class (PFC)/E-3 effective 1 April 1985, the highest rank he held.

4. The applicant's unit changed his duty status from:

- Present for Duty (PDY) to Absent Without Leave (AWOL) on 20 December 1985
- AWOL to Dropped from Rolls (DFR) on 19 January 1986

5. A DD Form 458 (Charge Sheet) shows on 23 January 2003, court-martial charges were preferred against the applicant for violation of Article 86 of the Uniform Code of Military Justice (UCMJ) for being AWOL from on or about 20 December 1985 until on or about 14 January 2003. The applicant's immediate commander recommended trial by Special Court-Martial with the power to adjudge a Bad Conduct Discharge.
6. On 24 January 2003, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, in lieu of trial by court-martial. He consulted with legal counsel and was advised of the basis for the 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 declined his rights to submit statements in his own behalf and to undergo a physical evaluation prior to separation.
7. On 28 January 2003, the applicant's immediate commander recommended approval of his request with a discharge UOTHC. The separation packet was reviewed by the and was determined to be legally correct.
8. On 28 January 2003, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial, with his service characterized as UOTHC. He also directed the applicant be reduced to E-1.
9. The applicant's DD Form 214 shows he was discharged on 30 January 2003, under the provisions of Army Regulation 635-200, Chapter 10, by reason of " In Lieu of Court-Martial" with SPD code "KFS" and Reentry Eligibility code "4." He was credited with completing 1 year, 5 months, and 13 days of net active service this period. He had lost time due to AWOL from 20 December 1985 to 13 January 2003. He did not complete his first full term of service.
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. The applicant provides three character reference letters that are available in their entirety for the Board's consideration. Each author rendered very favorable remarks regarding the applicant's compassion, willingness to help others, dedication to family, and devotion to his church.
12. 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, 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, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and found the character reference letters provided by the applicant insufficient to support clemency. 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

9/16/2024

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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 three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. 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.
3. 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.
4. Army Regulation 635-5-1 (SPD Codes) implements the specific authorities and reasons for separating Soldiers from active duty. It also prescribes when to enter SPD codes on the DD Form 214.

a. Paragraph 2-1 provides that SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of Department of Defense and the Military Services to assist in the collection and analysis of separation data. This analysis may, in turn, influence changes in separation policy. SPD codes are not intended to stigmatize an individual in any manner.

b. Table 2-3 provides the SPDs and narrative reasons for separation that are applicable to enlisted personnel. It shows, in part, SPD "KFS" is the appropriate code to assign to an enlisted Soldier who is voluntarily separated under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial.

5. 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//