

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 May 2024

DOCKET NUMBER: AR20230011596

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

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

- DD Form 293 (Application for the Review of Discharge)
- Statement of Conduct, dated 13 October 1976

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 in need of Department of Veterans Affairs benefits; he is suffering from some health issues.
3. Having prior honorable service in the U.S. Army Reserve, the applicant enlisted in the Regular Army on 10 June 1974.
4. On 23 September 1974, the applicant accepted nonjudicial punishment (NJP) for disobeying a lawful order issued by a commissioned officer on or about 17 September 1974.
5. On 14 April 1975, the applicant accepted NJP for disobeying a lawful order issued by a commissioned officer on or about 11 April 1975. His punishment included reduction in grade to E-2.
6. On 5 December 1975, the applicant accepted NJP for sleeping on his post while performing duty as a sentinel on or about 3 December 1975.
7. On or about 5 May 1976, the applicant was reported as absent without leave (AWOL) until he returned to military authorities on or about 10 May 1976.

8. On 2 June 1976, the applicant accepted NJP for being AWOL.
9. On 2 July 1976, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.
10. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. However, a letter issued by the Executive Officer, Headquarters and Headquarters Company, 13th Engineer Battalion, Fort Ord, CA, on 13 October 1976, noted the applicant's attitude, performance and appearance had improved dramatically since his Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13 (Separation for Unfitness or Unsuitability) packet was submitted. The Executive Officer recommended the applicant not be barred from continued active service.
11. The applicant was discharged on 26 October 1976. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 2 years, 4 months, and 12 days of active service with 5 days of lost time.
12. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency 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 DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's conduct and the reason for separation. The applicant received nonjudicial punishment on four separate occasions for infractions of being absent without leave, sleeping while on sentinel duty, and disobeying a lawful order. The Board majority 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. The Board minority noted that the misconduct consisted of minor infractions and voted to grant partial relief to upgrade the applicant's characterization of service to under honorable conditions (General). Based on a majority preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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.

■

---

■    ■

---

■

---

■

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, 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 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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.

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//