

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2024

DOCKET NUMBER: AR20230011819

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service to under honorable conditions (general).

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

- DD Form 293 (Application for the Review of Discharge)
- self-authored statement, undated

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 AR20080017933 on 5 February 2009.

2. As a new argument, the applicant states that he was stationed in Fort Stewart, GA, the first time he was charged with being absent without leave (AWOL). He was locked up for a false charge of trespassing and petty theft. He was also held in jail for a week on suspicion of being AWOL by the sheriff's department, and they never called his commanding officer or first sergeant. He was also charged with being AWOL in the summer of 1971, but he was, in fact, home on convalescent leave for his banged-up knee. In late 1971, he submitted a request form to go to Vietnam, but after arriving on time for his port call in Fort Lewis, WA on 15 January 1972, he and other Soldiers were diverted back to GA after a week. He liked the Army and had nothing against GA, but he hoped to see more of the world. His last AWOL was due to him running late to return to his company, but his sergeant told him he would ensure he got maximum punishment when he tried to explain what happened. He claims he was coached when he was in the stockade and answered yes to the question by his Major about whether he would go AWOL again if he were released. He asks the Board for relief.

3. The applicant was inducted into the Army of the United States on 20 January 1971. The highest rank/grade he held was private first class/E-3.

4. Special Court Martial Order Number 26, issued by Headquarters Command, U.S. Army Flight Training Center, Fort Stewart, GA on 30 November 1971, shows the applicant pled guilty to two specifications of being AWOL from his unit, on or about 2 October 1971 until on or about 25 October 1971 and on or about 31 October 1971 until on or about 14 November 1971.

a. The court sentenced him to confinement at hard labor for one and a half months and reduction to private/E-1. The sentence was adjudged on 19 November 1971.

b. The convening authority approved only so much of the sentence as provided for the reduction to private/E-1 and ordered duly executed on 30 November 1971.

5. A DA Form 3836 (Notice of Return of U.S. Army Member from Unauthorized Absence) shows, effective 7 March 1972, the applicant's unit reported him AWOL, and on 5 April 1972 he was dropped from the rolls. His duty status changed to returned to military control when he was apprehended by civilian authorities on 28 June 1972.

6. On 18 July 1972, court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with AWOL from on or about 7 March 1972 until on or about 28 June 1972.

7. On 20 July 1972, the applicant consulted with legal counsel and was advised of the basis for his contemplated trial by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge, the effects of his request for discharge, and the rights available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, (Discharge for the Good of the Service in Lieu of Trial by Court-Martial). In his request for discharge, he acknowledged he was not subject to coercion, and he was advised of the implications attached to his request. He understood that if his request for discharge was accepted, he may be discharged with a characterization of service under other than honorable conditions and furnished an Undesirable Discharge Certificate. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

b. He elected not to submit a statement in his own behalf.

8. On 26 July 1972, the applicant underwent a complete medical examination and mental status evaluation as part of his consideration for discharge due to his misconduct. His mental status evaluation noted, he met the retention standards, was mentally responsible, was able to distinguish right from wrong and adhere to the right and had the mental capacity to understand and participate in board proceedings.

9. The applicant's chain of command recommended approval of the applicant's request for discharge and the issuance of an Undesirable Discharge Certificate.

10. On 27 September 1972, the separation authority approved the applicant's request for discharge for the good of the service – in lieu of trial by court-martial and directed the issuance of an Undesirable Discharge Certificate (DD Form 258A).

11. The applicant was discharged accordingly on 11 October 1972, under the provisions of AR 635-200, Chapter 10, with an UOTHC characterization of service in the grade of E-1. He received a separation program number code of 246 (for the good of the service) and reenlistment code RE-3. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), shows he completed 1 year, 2 months, and 28 days of net active service during the period covered. Block 26a (Non-Pay Periods Time Lost) and block 30 (Remarks), shows the entries:

- 4 June 1971 thru 6 June 1971
- 2 October 1971 thru 24 October 1971
- 31 October 1971 thru 13 November 1971
- 15 November 1971 thru 17 November 1971
- 4 February 1972 thru 6 February 1972
- 6 March 1972 thru 27 June 1972

12. The ABCMR considered the applicant's petition for discharge upgrade on 5 February 2009. After reviewing the application and all supporting documents, the Board determined relief was not warranted. The Board found the evidence presented did not demonstrate the existence of a probable error or injustice as a basis for correction of the applicant's records.

13. The Board should consider the applicant's argument and evidence, along with the overall 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 DoD guidance for liberal consideration of discharge upgrade requests. The applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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 to amend the decision of the ABCMR set forth in Docket Number AR20080017933 on 5 February 2009.

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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. Army Regulation 635-200, in effect at the time, set forth the primary authority for separating enlisted personnel.

a. Chapter 10 states in part, a member who has committed an offense or offenses, the punishment for any of which, under the UCMJ and the Manual for Court-Martial, include bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. In addition, the request for discharge may be submitted at any stage in the processing of the charges until the court-martial convening authority's final action on the case. Commanders will also ensure that a member will not be coerced into submitting a request for discharge in lieu of trial by court-martial. The member will be given a reasonable time (not less than 72 hours) to consult with a consulting counsel and to consider the wisdom of submitting such a request for discharge.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. An UOTHC discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and in lieu of trial by court-martial.

2. 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 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//