

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 June 2024

DOCKET NUMBER: AR20230011970

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

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

- DD Forms 149 (Application for Correction of Military Record)
- Self-Authored Statement

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 was involved in a fight over a girl that got out of hand. The other Soldier threw the first punch but never received punishment. He was young and foolish, and his decision made him lose focus on his 20-year career. He was not doing what the Army taught him, and he is sorry. He is 66 years old and a good person and asks the Board for relief so he can die with honor.

3. The applicant enlisted in the Regular Army on 1 May 1975. He was honorably discharged on 20 April 1978 for immediate reenlistment on 21 April 1978. He reenlisted on 30 October 1979.

4. The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on four occasions:

a. On or about 27 March 1980 and 19 April 1980, for failing to go at the time prescribed to his appointed place of duty.

b. On or about 1 October 1980, for wrongfully and unlawfully leaving an accident in which a vehicle he was a passenger in was involved and for being derelict in the performance of his duties. His punishment was reduction to specialist/E-4 (suspended

for 3 months). On 14 November 1980, the suspended punishment of reduction to specialist/E-4 imposed on 5 November 1980 was vacated and ordered duly executed.

c. On or about 8 December 1980, for violating a lawful general regulation, by being drunk and disorderly in command, and for communicating a threat to injure.

d. On or about 2 February 1981, for being drunk and disorderly in a public place and for assault by striking another Soldier. His punishment included reduction to private first class/E-3.

5. On 13 March 1981, court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) shows he was charged with:

- on or about 4 March 1981, violating a lawful general regulation
- on or about 5 March 1981, disobeying a lawful command from his superior commissioned officer and violating a lawful general regulation
- on or about 7 March 1981, behaving himself with disrespect towards a superior commissioned officer, willfully destroying military property of the United States, and twice breaking restriction.

6. On 16 March 1981, the applicant consulted with legal counsel and was advised of the basis for the contemplated 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.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. 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. Documentation as to whether the applicant elected or did not elect to submit statements in his own behalf are not available for review.

7. The applicant's chain of command recommended approval of the applicant's request for discharge and the issuance of an UOTHC discharge.

8. On 21 March 1981, the applicant underwent a complete mental status evaluation as part of his consideration for discharge due to his misconduct. His mental status evaluation noted, he met retention standards, had no significant mental illness, was mentally responsible, was able to distinguish right from wrong and able to adhere to the right, and had the mental capacity to understand and participate in board proceedings.

9. On 24 March 1981, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He directed the issuance of an DD Form 794A (UOTHC Discharge Certificate), reduction to private/E-1, and separation program designator (SPD) code JFS.

10. The applicant was discharged accordingly on 2 April 1981, under the provisions of Army Regulation 635-200, Chapter 10, by reason of administrative discharge conduct triable by court-martial, with an UOTHC characterization of service in the grade of E-1. He received a separation code of "JFS" and a reenlistment code of "RE-3." His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows:

a. He completed 2 years, 11 months, and 12 days of active service.

b. Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized):

- Marksman Marksmanship Qualification Badge with Pistol Bar (Cal .45)
- Army Good Conduct Medal

c. Block 18 (Remarks): "IMMEDIATE REENLISTMENTS THIS PERIOD: 780421 to 791029."

11. The applicant petitioned the Army Discharge Review Board (ADRB) for upgrade of his service characterization. On 27 January 1984, after careful consideration the ADRB determined he was properly and equitably discharged.

12. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

13. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. 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 Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with disrespectful behavior toward a commissioned officer, disobeying a lawful order, violating a lawful general regulation, breaking military property, and violating restriction; 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. The Board noted the applicant's statement of being young and foolish; however, he provided no documentation to support his request, including post-service achievements or letters of support toward clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

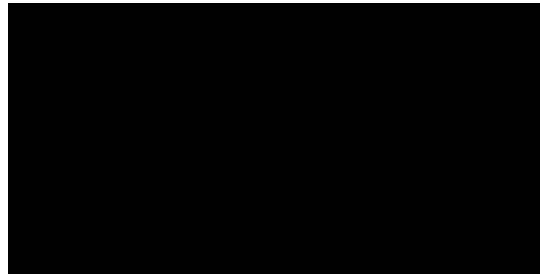
2. Prior to closing the discussion, the Board reviewed and concurred with the analyst of record's administrative notes concerning the applicant's continuous honorable service for the period 21 April 1978 to 29 October 1979.

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending 2 April 1981, is missing an important entry that may affect his eligibility for post-service benefits. As a result, amend the DD Form 214 in block 18 by adding the entry "CONTINUOUS HONORABLE ACTIVE SERVICE: 780421 – 791029."

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 635-5 (Personnel Separation Documents), in effect at the time, did not provide for an additional entry for continuous honorable active service, when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable. However, an interim change, published on 2 October 1989 does provide for such an entry.

3. 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 their ability, and there is no derogatory information in their military record, they 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 under other than honorable 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.

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/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, Boards 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//