

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2024

DOCKET NUMBER: AR20230011979

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable.

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 correction of his record is warranted due to intolerable conditions. He was drafted which required him to leave his pregnant wife.
3. On 4 April 1969, the applicant was inducted into the Army of the United States. Upon completion of initial entry training, he was awarded military occupational specialty 94B (Cook).
4. On 4 May 1969, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 8 May 1969.
5. On 9 May 1969, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for going AWOL. His punishment included forfeiture of \$30.00 per month for two months, and 45 days restriction and extra duty.
6. On 3 December 1969, the applicant was reported as AWOL a second time and remained absent until he returned to military authorities that same day.
7. Before a special court-martial on 23 January 1970, at Mannheim, Germany, the applicant was found guilty of one specification of going AWOL; one specification of

failing to report to his appointed place of duty, on or about 4 December 1969; and one specification of unlawfully carrying a concealed weapon, a knife, on or about 3 December 1969. The court sentenced him to forfeiture of \$150.00 and a letter of reprimand. The sentence was approved on 11 February 1970, and the record of trial was forwarded for appellate review.

8. On 6 February 1970, the applicant was reported as AWOL a third time, and remained absent until he returned to military authorities 8 April 1970.

9. Before a special court-martial on 9 May 1970, at Mannheim, Germany, the applicant was found guilty of one specification of going AWOL from 6 February 1970 through 8 April 1970. The court sentenced him to reduction in grade to E-1, confinement at hard labor for six months, and forfeiture of \$60.00 pay per month for six months. The sentence was approved on 28 May 1970, but the execution of so much thereof in excess of confinement at hard labor for three months, and forfeiture of \$60.00 pay per month for three months. The record of trial was forwarded for appellate review.

10. On 9 August 1970, the applicant was reported as AWOL a fourth time, and remained absent until he returned to military authorities 5 October 1970.

11. Court-martial charges were again preferred against the applicant for violations of the UCMJ; however, the relevant DD Form 458 (Charge Sheet) is not available for review.

12. The applicant consulted with legal counsel on 21 October 1970, 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 an undesirable discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions 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 he understood that if his request for discharge was accepted, he may be discharged UOTHC. He understood that, as a result of the issuance of such a discharge, 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 law.

b. The applicant declined to submit a statement in his own behalf.

13. On 26 October 1970, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.

14. On 28 October 1970, the applicant's commander recommended approval of the applicant's request for discharge. The commander noted the applicant's current AWOL charges and his previous court-martial convictions.

15. On 5 November 1970, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

16. The available record is void of the separation authority's approval of the applicant's discharge request, in lieu of trial by court-martial.

17. The applicant was discharged on 3 December 1970. His DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 1 year, 4 months, and 11 days of net active service this period with 111 days of lost time.

18. 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.

19. In reaching its determination, the Board can consider the applicant's petition, his arguments and assertions, and his service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, 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 the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. 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:

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 for correction of the records of the individual concerned.

12/19/2024

X

CHAIRPERSON

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.

c. Chapter 10 provided 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, a UOTHC discharge was normally considered appropriate.

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//