

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 May 2024

DOCKET NUMBER: AR20230011985

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

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 (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 his discharge was unjust. The personal issues he was dealing with were not addressed at the time of his discharge.
3. The applicant enlisted in the Regular Army on 29 January 1971, for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 71B (Clerk Typist). The highest rank he attained was private first class/E-3.
4. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on three occasions:
 - a. On 30 June 1971, for absenting himself from his unit without authority (AWOL), from on or about 28 June 1971 [sic] until on or about 29 May 1971. His punishment consisted forfeiture of \$43.00 pay, one week of extra duty, and one week of restriction.
 - b. On 9 November 1971, for being AWOL, from on or about 4 October 1971 until on or about 5 November 1971. His punishment consisted of forfeiture of \$44.00 pay and reduction to private/E-2.
 - c. On 12 May 1972, for being AWOL, from on or about 1 May 1972 until on or about

6 May 1972. His punishment consisted of forfeiture of \$144.00 pay, 14 days of extra duty, and 30 days of restriction.

5. A DA Form 3836 (Notice of Return of U.S. Army Member from Unauthorized Absence), shows the applicant was reported AWOL and subsequently dropped from the rolls on 16 August 1972. He was apprehended by military authorities and returned to military control on 27 April 1973.

6. Court-martial charges were preferred against the applicant on 28 June 1973 for violations of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows he was charged with four specifications of being AWOL, on or about 11 April 1972 until on or about 14 April 1972, on or about 1 May 1972 until on or about 6 May 1972, on or about 10 July 1972 until on or about 7 August 1972, and on or about 16 August 1972 until on or about 22 June 1973.

7. The applicant consulted with legal counsel on 10 July 1973.

a. He 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 available to him.

b. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. 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.

c. He was advised he could submit any statements he desired in his behalf. He elected not to submit a statement.

8. The applicant underwent a mental status evaluation on 11 July 1973. The evaluating provider determined there was no impression of significant mental illness, and the applicant had the mental capacity to participate in board proceedings.

9. On that same date, the applicant underwent a medical examination. A Standard Form (SF) 93 (Report of Medical History) and the corresponding SF 88 (Report of Medical Examination) show the applicant reported being in good health and was deemed physically qualified for separation.

10. On 17 July 1973, the applicant's company and battalion commanders both recommended disapproval of his request for discharge for the good of the service and

further suggested the applicant be tried by a special court-martial, with the power to adjudge a bad conduct discharge.

11. On 19 July 1973, the applicant's brigade commander recommended approval of the applicant's request for discharge and further recommended he be furnished an Undesirable Discharge Certificate.

12. The separation authority approved the applicant's request for discharge on 31 July 1973 and directed the issuance of a DD Form 258A (Undesirable Discharge Certificate).

13. Accordingly, the applicant was discharged on 9 August 1973, under the provisions of AR 635-200, Chapter 10, for the good of the service. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) confirms his service was characterized as UOTHC, with separation program number 246 and reenlistment codes RE-3, 3B, and 1B. He was credited with 1 year, 5 months, and 29 days of net active service, with 378 days of lost time.

14. Administrative separations under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

15. The Board should consider the applicant's statement and provided evidence 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome being AWOL for 378 days at various period during his period of service.

2. The Board noted, the applicant provided no post service achievements or character letters of support to weigh a clemency determination. The Board found the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 1 year, 5 months, and 29 days of net active service. 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. Therefore, relief was denied.

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, USC, 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. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

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.

3. 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/NRs) on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

//NOTHING FOLLOWS//