

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 May 2024

DOCKET NUMBER: AR20230012001

APPLICANT REQUESTS: his under other than honorable conditions (UOTHC) discharge be upgraded. Additionally, he requests an appearance before the Board via video/telephone.

APPLICANT'S SUPPORTING DOCUMENT 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 he was removed from military service for a bad check. He found that very harsh. He is looking to see if his first enlistment can assist in upgrading his type of discharge. He and his wife have been questioning if it is possible to seek upgrade changes.
3. The applicant's complete military records are not available for review.
4. Having enlisted in the U.S. Army Reserve Delayed Entry Program (DEP) on 21 October 1982, the applicant enlisted in the Regular Army on 10 August 1983 for four years. His military occupational specialty was 33S (Electronic Warfare/Intercept System Repairer).
5. The applicant served in Germany from 21 September 1984 through 9 November 1991.
6. The applicant reenlisted on 8 April 1987 for a period of 4 years.
7. The Suspension of Check Cashing Privileges memorandum, dated 30 September 1988, shows check chasing privileges for the applicant were suspended for three years.

8. On 21 October 1988, a Report to Suspend Favorable Personnel Actions (Flag) was initiated for the applicant. The reason for the Flag was he was pending adverse action for rendering bad checks.
9. The applicant's available record is void of the specific facts and circumstances surrounding the court-martial charges that were preferred against the applicant. The relevant DD Form 458 (Charge Sheet) is not available for review.
10. The applicant consulted with legal counsel on 16 November 1988, 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. After consulting with legal counsel, he voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10, in for the good of the service, lieu of trial by court-martial. 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 and he may expect to encounter substantial prejudice in civilian life because of a dishonorable discharge.
 - b. He elected to submit statements in his own behalf however, the statements are not available for review.
 - c. He requested delay of the trial of his case until after this request was acted upon by court-martial convening authority.
11. The applicant declined a separation medical examination on 21 November 1988.
12. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 16 December 1988. He directed the applicant's UOTHC discharge and his reduction to the lowest enlisted grade.
13. The Medical Statement of Option, dated 10 January 1989, shows the applicant did not desire a separation medical examination.
14. The applicant was discharged on 13 January 1989. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, Chapter 10, for the good of the service-in lieu of trial by court-martial with Separation Code KFS and Reenlistment Codes 3-3C. His service was characterized as UOTHC. He completed 5 years, 5 months, and 4 days of net active

service. His awards include the Army Service Ribbon, Army Good Conduct Medal, and the Overseas Service Ribbon.

15. Additionally, his DD Form 214 shows in Block 18 (Remarks) the entry, "IMMEDIATE REENLISTMENT THIS PERIOD: 830810 TO 870407" (indicating 10 August 1983 to 7 April 1987). There is no entry specifying the applicant's period of honorable service.

16. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

17. In reaching its determination, the Board can consider the applicant's petition and 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 partial relief was 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 the misconduct of writing bad checks.

2. The applicant provided no post service achievements or character letters of support for the Board consideration for clemency. The Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge. Therefore, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

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: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending The applicant's DD Form 214 for the period ending 12 December 1989 by adding in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 830810 UNTIL 870407

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to the applicant's under other than honorable conditions (UOTHC) discharge being upgraded.

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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.

ADMINISTRATIVE NOTES: N/A

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. AR 635-200, Personnel Separations, in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. When a Soldier is discharged before ETS for a reason for which an honorable discharge is discretionary, the following considerations apply. Where there have been infractions of discipline, the extent thereof should be considered, as well as the seriousness of the offense(s).

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 of that regulation provides that a Soldier who has committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against

the Soldier or where required, after referral, until final action by the court-martial convening authority.

4. Army Regulation 635-5 (Personnel Separations – Separation Documents), in effect at the time, prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes the standardized policy for preparing and distributing the DD Form 214. It states the DD Form 214 provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

a. Paragraph 1-4b(5) of the regulation in effect at the time stated that a DD Form 214 would not be prepared for enlisted Soldiers discharged for immediate reenlistment in the Regular Army.

b. Paragraph 2-4h(13) of the regulation currently in effect states that item 13 lists awards and decorations for all periods of service in the priority sequence specified in Army Regulation 600-8-22 (Military Awards). Each entry will be verified by the Soldier's records.

c. Paragraph 2-4h(18) of the regulation currently in effect states that item 18 documents the remarks that are pertinent to the proper accounting of the separating Soldier's period of service. Subparagraph (c) states that for enlisted Soldiers with more than one enlistment period during the time covered by the DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify the appropriate dates. For Soldiers who have previously reenlisted without being issued a DD Form 214 and who are later separated with any characterization of service except "honorable," enter "CONTINUOUS HONORABLE ACTIVE SERVICE FROM" (first day of service which DD Form 214 was not issued) UNTIL (date before commencement of current enlistment)." Then, enter the specific periods of reenlistments as prescribed above.

5. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Service 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.

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//