

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 June 2024

DOCKET NUMBER: AR20230012086

APPLICANT REQUESTS: his under other than honorable conditions (UOTHC) discharge be upgraded.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 2-1 (Personnel Qualification Record) (two pages)
- DD form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (DVA) Letter

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 every year when he receives his "summary of benefits" it states Army, Dishonorable, 14 October 1984 to 31 March 1988. The correction should be made because his discharge was not dishonorable.
3. The applicant enlisted in the Regular Army on 14 October 1981 for a period of three years. His military occupational specialty was 91B (Medical Specialist).
4. The applicant served in Germany from 22 July 1983 through 21 April 1987.
5. The applicant reenlisted on 30 July 1984 for a period of 5 years.
6. The applicant was apprehended by civil authorities and confined pending trial on 30 May 1987. He was present for duty (PDY) on 6 June 1987.
7. The applicant was absent without leave (AWOL) on 9 September 1987. He was PDY on 6 October 1987, AWOL on 17 October 1987 and dropped from the rolls on 16 November 1987.

8. Court martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ) on 23 November 1987. His DD Form 458 (Charge Sheet) shows he was charged with AWOL on or about 17 October 1987 and he remained absent.

9. The applicant surrendered to military authorities and was PDY on 4 January 1988.

10. He did not desire a separation examination on 5 January 1988.

11. The Personnel Control Facility Information Sheet, dated 5 January 1988 shows the applicant did not want to stay in the service and he went AWOL because he had problems at home, he felt he would go crazy. He turned himself in and was sent to Fort Drum, NY, and things got worse. He had no action pending. His unit said if he went to the field and acted accordingly in the field that when they left the field nothing would happen except maybe some extra duty. He had no desire to stay in. If they sent him back, he would do the same thing again. He wanted to be home with his lady and family. He talked to the chaplain and legal officer, but it didn't help.

12. An updated Charge Sheet shows court martial charges were preferred against the applicant for violation of the UCMJ on 12 January 1988. His DD Form 458 shows he was charged with AWOL on or about 17 October 1987 until on or about 4 January 1988.

13. The applicant consulted with legal counsel on 13 January 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 not to submit statements in his own behalf.

14. The applicant's commander recommended approval on 25 January 1988 and that an UOTHC discharge certificate be issued. In his opinion the applicant had no motivation for continued service and would not respond to either counseling or rehabilitation.

15. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 17 February 1988. He directed the applicant's UOTHC discharge and his reduction to the lowest enlisted grade.

16. The applicant was discharged on 31 March 1988. His DD Form 214 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. His service was characterized as UOTHC. He completed 6 years, 1 month, and 25 days of net active service. He lost time from 30 May 1987 to 5 June 1987, 9 September 1987 to 5 October 1987, and 17 October 1987 to 3 January 1988. His awards include the Army Service Ribbon, Army Good Conduct Medal, and the Overseas Service Ribbon.

17. 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.

18. The applicant provides:

a. A copy of his DD Form 214 and DA Form 2-1 (Personnel Qualification Record) (two pages) as discussed above.

b. A DVA letter, dated 8 December 2022, shows two periods of service, a service-connected disability with a service-connected combined rating of 70%.

19. On 8 October 1988, the Army Discharge Review Board determined the applicant was properly and equitably discharged and denied his request for a change in the character and/or reason of his discharge.

20. 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:

The Board carefully considered the applicant's request, supporting documents, 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. The Board concurs with the corrections described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Other than the corrections addressed in Administrative Note(s) below, the Board determined 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 otherwise 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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending 31 March 1988, is missing important entries that affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entries in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE ACTIVE SERVICE FROM 811014 UNTIL 840729

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, 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.

3. 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/NR) 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//