

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 12 July 2024

DOCKET NUMBER: AR20230012245

APPLICANT REQUESTS: in effect, an upgrade of his under other than honorable conditions (UOTHC) discharge.

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 he was just a young man drinking a lot. He was trying to make sense of life after being molested as a kid.
3. On 30 June 1975, the applicant enlisted in the Regular Army.
4. The applicant received nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on three occasions:
 - a. On 25 May 1976, for failing to go at the time prescribed to his appointed place of duty, on or about 18 May 1976.
 - b. On 9 March 1977, for failing to go at the time prescribed to his appointed place of duty, on or about 4 March 1977. His punishment included reduction in grade to E-2.
 - c. On 25 April 1977, for disobeying a lawful command from his superior commissioned officer, on or about 15 April 1977. His punishment included reduction in grade to E-1.
5. Court-martial charges were preferred against the applicant on 23 May 1977, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with three specifications of failing to obey lawful orders; one specification of being

disrespectful in language toward a superior noncommissioned officer; one specification of wrongfully using provoking words to another Soldier; and one specification of being drunk in camp.

6. Additional court-martial charges were preferred against the applicant on 10 June 1977, for violations of the UCMJ. His DD Form 458 shows he was charged with one specification of unlawfully striking P_A_A_; and one specification of wrongfully committing a threat to injure P_A_A_.

7. 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 bad conduct 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 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. He did not submit a statement in his own behalf.

8. On 11 July 1977, the applicant's commander recommended disapproval of his request for discharge. The commander noted the applicant's various court-martial charges.

9. The applicant's intermediated commanders recommended approval of the request for discharge and further recommended a discharge characterization of UOTHC.

10. On 19 July 1977, the separation authority approved the applicant's request for discharge, and directed his reduction to the lowest enlisted grade and issuance of a UOTHC discharge certificate.

11. On 21 July 1977, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.

12. On 27 July 1977, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

13. The applicant was discharged accordingly on 8 August 1977. His DD Form 214 (Report of Separation from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Program Designator JFS and Reenlistment Code 3. He completed 2 years, 1 month, and 9 days of active service this period.

14. 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.

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

BOARD DISCUSSION:

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 DoD 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 violating lawful orders, disrespect toward a noncommissioned officer, being drunk on duty and additional charges of striking an individual and communicating a threat, violations 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 contention being young and drinking a lot; however, determined a preponderance of the evidence shows an error or injustice did not occur when the applicant was discharged in lieu of trial by court-martial.

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.

■

■
■

■
■

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//