

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 July 2024

DOCKET NUMBER: AR20230012285

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (General)
- a different narrative reason for separation
- a favorable change of his separation and reentry eligibility (RE) codes

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)

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 his mother called him while he was stationed at Fort Polk, LA and informed him that his wife and daughter were both homeless. He was granted emergency leave; he went home and tried to gather as many resources as possible to change their living situation. He was very short on money, so the only option available to him at that time was to get a quick job. He tried his very best to provide for them and could not leave them in that situation.
3. On 14 October 1970, the applicant enlisted in the Regular Army.
4. On 27 April 1971, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 4 November 1971.
5. On 17 November 1971, the applicant was reported as AWOL and remained absent until he returned to military authorities on 31 March 1972.

6. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ); however, the relevant DD Form 458 (Charge Sheet) is not available for review.
7. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.
8. The applicant was discharged on 10 May 1972. His DD Form 214 shows he completed 8 months and 2 days of active service with 331 days of lost time. His DD Form 214 also shows in:
 - Item 11c (Reason and Authority) – Chapter 10, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Separation Program Number (SPN) 246, for the good of the service
 - Item 13a (Character of Service) – UOTHC
 - Item 15 (Reenlistment Code) – 3B
9. 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.
10. 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:

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 request, supporting documents, evidence in the records, and published Department of Defense 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 an offense 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 concerning his family dynamic at the time of his service; however, did not find it

compelling for a discharge upgrade. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

2. As it relates to the applicant's request for amendment of his narrative reason for separation and corresponding separation and reentry eligibility codes, the Board determined there to be no error or injustice in the administrative regularity of the designated narrative and codes and denied relief.

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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 601-210 (Regular Army and Army Reserve Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-6 provides a list of RE codes.

- RE code "1" applies to Soldiers completing an initial term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification

3. Army Regulation 635-5 (Personnel Separations – Separation Documents), Appendix A (SPN and Authority Governing Separations), provided for SPNs and their corresponding reason for separation/discharge. The SPN (later renamed Separation Program Designator codes) are three-character alphabetic combinations that identify reasons for and types of separation from active duty. The SPN "246" was the correct code for Soldiers separating under the provisions of Army Regulation 635-200 for the good of the service.

4. 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.

5. 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//