

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 June 2024

DOCKET NUMBER: AR20230012408

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(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:

a. During his discharge, he went home on leave. He was pulled over, and his 18-year-old brother was with him. The applicant was 21 years old, and his girlfriend was 17 years old. The applicant was called for a ride, he picked them up and dropped them off at the local park. The applicant was charged with drug trafficking because he picked them up from the home and had them in his car. The girl had less than 5 grams of urine [sic] on her, which he was unaware of being on active duty. He was arrested and charged, he got a lawyer to try to fight it. He did not come back from leave for 2 months.

b. He returned, explained the event, and pleaded that he never did anything wrong. He was pulled over helping his brother get to the lake with his girlfriend. He was forced to plea to an agreement because he was charged with influencing a minor and drug trafficking. The charge of influencing a minor would never leave his record so they put him in a pinch. He now had a felony, and he was looking to reenlist. During his service he was a great, committed Soldier. The park rangers ruined his life for a license plate light out.

c. This could help him to correct and re-enlist or at least not be dishonorable because of an error by the state park ranger law enforcement. His felony was expunged he has no record. He was forced out because of the misuse of the law and forced to change in his life. He was a great Soldier, and he wants to reenlist. He should have been able to get out honorably but because of the felony it made him not eligible. He was young.

3. The applicant enlisted in the Regular Army on 12 January 2006 for a period of 3 years and 16 weeks. His military occupational specialty was 11B (Infantryman).

4. The applicant was absent without leave (AWOL) on 24 January 2007 and dropped from the rolls (DFR) on 24 February 2007.

5. Court martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ) on 24 February 2007 for AWOL on or about 25 January 2007 with the intent to remain away permanently and did remain so absent.

6. The applicant was present for duty (PDY) on 13 August 2007. He turned himself in to military authorities and was transferred to military control. He was counseled on 14 August 2007 for AWOL and DFR.

7. The applicant offered to plead guilty on 12 September 2007 as part of his offer he agreed to waive all motions that he was allowed to waive and the offer to plead guilty originated with him and no person or persons had made any attempt to force or coerce him into making this offer to plead guilty. His case was referred to a summary court martial.

8. Before a summary court martial on 17 September 2007, the applicant was found guilty of AWOL from on or about 24 January 2007 until on or about 13 August 2007. The court sentenced him to reduction to private/E-1, forfeiture of \$867.00 and confinement for 30 days.

9. A Report of Mental Status Evaluation, dated 12 October 2007, shows the applicant had the mental capacity to understand and participate in the proceedings, met retention requirements and was mentally responsible. He was AWOL for 169 days. He was disrespectful to supervisors. He does not deny experiencing suicidal or homicidal ideations, he was determined to be competent at the time and capable of understanding the consequences of his actions. He was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct. He was cleared for any administrative action deemed necessary by command.

10. The applicant's commander notified him on 23 October 2007 he was initiating action under the provisions of Army Regulation (AR) 635-200 (Active-Duty Enlisted

Administrative Separations), Chapter 14-12c, to separate the applicant for his conviction in a summary court martial for AWOL from 24 January 2007 to 13 August 2007. He recommended an UOTHC characterization of service. The applicant acknowledged receipt on the same date.

11. The applicant consulted with legal counsel on 31 October 2007 and was advised of the basis for the contemplated actions to separate him and of the rights available to him.

- He waived consideration of his case by an administration separation board. He waived personal appearance before an administrative separation board.
- He elected not to submit statements in his own behalf.

12. The applicant's commander formally recommended him for separation from service under the provisions of AR 635-200, paragraph 14-12c, by reason of commission of a serious offense. Further attempts of rehabilitation were not in the best interests of the Army therefore rehabilitative transfer was waived. The applicant clearly had no potential for useful service under the conditions of full mobilization and should not be transferred into the individual ready reserve (IRR). The chain of command recommended approval with a UOTHC characterization of service.

13. The separation authority approved the recommended separation on 21 November 2007 under the provisions of AR 635-200, Chapter 14-12c, commission of a serious offense and directed the issuance of a UOTHC discharge.

14. The applicant was discharged on 11 December 2007. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12C, by reason of misconduct (serious offense) with Separation Code JKQ and Reentry Code 3. His service was characterized as UOTHC. He completed 4 months and 11 days of net active service with time lost time from 24 January 2007 to 12 August 2007. He was awarded Army Service Ribbon.

15. 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. The Board determined 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.

2. 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 applicant was discharged from active duty for commission of a serious offense. He received an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference of a persuasive nature, and that outweigh his misconduct, in support of a clemency determination. 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.

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.

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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.

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. Army Regulation 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 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 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered

appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

4. The Under Secretary of Defense for 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//