

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 June 2024

DOCKET NUMBER: AR20230012536

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions (UOTHC).

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record), 31 July 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 18 June 1987
- Army Discharge Review Board correspondence, date unknown

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 never got into trouble during his first period of enlistment; he always worked and supported his country. After he reenlisted, he had trouble with his home and children. He was told he could request an upgrade 10 years after his discharge.
3. The applicant enlisted in the Regular Army on 2 November 1982 for a 3-year period. He conducted an immediate reenlistment on 1 November 1985 for an additional 5-year period. He was awarded military occupational specialty 52C (Utilities Equipment Repairer) and the highest rank he attained was specialist four/E-4.
4. DA Forms 4187 (Personnel Action) show the applicant's duty status changed as follows:
 - from present for duty (PDY) to absent without leave (AWOL) effective 5 January 1987
 - from AWOL to dropped from rolls (DFR) effective 5 February 1987

- from DFR to PDY when he surrendered to military authorities on 7 May 1987.

5. Court-martial charges were preferred against the applicant on 12 May 1987, for violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with one specification of AWOL from on or about 5 January 1987 until on or about 7 May 1987.

6. The applicant consulted with legal counsel on 13 May 1987 and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10. He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected to not submit a statement in his own behalf.

7. On 18 May 1987, the applicant's immediate and intermediate commander recommended approval of the request for discharge under the provisions of AR 635-200, Chapter 10, and issuance of a discharge UOTHC.

8. On 21 May 1987, the separation authority approved the applicant's request for discharge for the good of the service and further directed the applicant receive a discharge UOTHC, and that he be reduced to the lowest enlisted grade of E-1.

9. The applicant's DD Form 214 shows he was discharged on 18 June 1987, under the provisions of AR 635-200, Chapter 10, for the good of the service-in lieu of court martial, in the grade of E-1. He received a characterization of service of UOTHC. He was credited with 4 years, 3 months, and 15 days of net active service with time lost from 5 January 1987 to 6 May 1987. He was awarded the following decorations, medals, badges, citations, and campaign ribbons:

- Army Achievement Medal (1st oak leaf cluster)
- Army Good Conduct Medal

- Overseas Service Ribbon
- Army Service Ribbon
- Expert Marksmanship Qualification Badge with M-16 Rifle Bar
- Marksman Marksmanship Qualification Badge with Grenade Bar

10. Additionally, his DD Form 214 shows in Block 18 (Remarks) the entry, "IMMEDIATE REENLISTMENT THIS PERIOD: 821102-851031" (indicating 2 November 1982 to 31 October 1985). However, there is no entry specifying the applicant's period of honorable service (see Administrative Notes).

11. Discharges under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service from the Soldier to avoid a trial by court-martial. An UOTHC character of service is normally considered proper.

12. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, 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 concurred 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.

11/1/2024

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 18 June 1987 is missing entries that may affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 821102 UNTIL 851031

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. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have

been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a UOTHC discharge is normally considered appropriate.

b. 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.

c. 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.

3. Army Regulation 635-5 (Personnel Separations – Separation Documents) 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(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.

4. 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.

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//