

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 July 2024

DOCKET NUMBER: AR20230012568

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

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

- DD Form 149 (Application for Correction of Military Record)
- DD 214 (Report of Separation from Active Duty), ending 2 March 1979

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 he was told he could reenlist in the Army after two years. He regrets not doing it. He knows what he did was wrong and would like things to be right later in his life.
3. The applicant enlisted in the Regular Army on 14 October 1977, for a 4-year period. Upon completion of initial entry training, he was awarded military occupational specialty 17C (Target Acquisition Specialist). The highest rank he attained was private/E-2.
4. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 7 August 1978, for two occasions of failing to go at the time prescribed to his appointed place of duty, on or about 21 July 1978. His punishment consisted of forfeiture of \$50.00 pay, 7 days of extra duty, and 7 days of restriction.
5. The applicant was reported absent without leave (AWOL) on 15 September 1978. He was apprehended by the Fort Sill AWOL Apprehension Team on 20 September 1978, and returned to duty. He was subsequently placed in pre-trial confinement.

6. Before a special court-martial at Fort Sill, OK, on 31 October 1978, the applicant pled guilty to and was found guilty of ten specifications of writing dishonored checks, between on or about 23 August 1978 and 4 September 1978, two specifications of failure to repair, on or about 11 September and 12 September 1978, and being AWOL, from on or about 15 September 1978 until on or about 20 September 1978. He was sentenced to reduction to E-1, confinement at hard labor for two months, and forfeiture of \$50.00 pay per month for three months. The sentence was approved and ordered duly executed on 15 November 1978.

7. The applicant was transferred to Brigade during his period of correctional training. During an initial interview, dated 15 December 1978, the applicant stated he was unsure whether he wanted to "get out" or return to duty.

8. The applicant was reported AWOL on 21 December 1978. He was confined by civil authorities on 30 December 1978 and subsequently released to military authorities on 23 January 1979.

9. At the request of his unit, he was seen by a Social Worker on 25 January 1979. The applicant stated, in effect, it was not until he started having marital problems that the military became a problem too. He was now divorced, and his only desire was to be discharged so he could return home and start working. The applicant was cleared for any administrative action deemed appropriate by the command.

10. Before a summary court-martial at Fort Riley, KS, on 7 February 1979, the applicant pled guilty to and was found guilty of being AWOL, from on or about 21 December 1978 to 23 January 1979. He was sentenced to forfeiture of \$50.00 pay and confinement at hard labor for 30 days, with a recommendation that confinement beyond discharge date be remitted. The sentence was approved and ordered duly executed on 8 February 1979.

11. The applicant's immediate commander recommended the applicant be discharged under the provisions of Army Regulation (AR) 635-200, paragraph 14-33, by reason of misconduct – frequent incidents of a discreditable nature. The commander noted the applicant showed little desire to return to duty after receiving correctional training. He did not respond favorably to counseling received from social workers, the leadership team, and unit cadre. The commander further recommended additional rehabilitative requirements be waived.

12. On 15 February 1979, the intermediate commander recommended approval of the discharge request and concurred with the recommendation pertaining to the waiver of counseling and rehabilitation.

13. The applicant's immediate commander notified the applicant on 16 February 1979 of the pending discharge proceedings due to misconduct. The applicant acknowledged receipt on the same date.

14. The applicant consulted with legal counsel on 20 February 1979. He was advised of the basis for the contemplated separation action, its effects, the rights available to him, and the effect of waiving his rights. He waived the right to representation by counsel and an appearance before a board of officers to have his case considered. He acknowledged understanding that he may be ineligible for many or all benefits as a Veteran under Federal and State laws, and he could expect to encounter substantial prejudice in civilian life as a result of the issuance of an UOTHC discharge. He elected not to submit a statement in his own behalf.

15. The separation authority approved the recommended discharge on 26 February 1979, waived the rehabilitative transfer requirement, and directed the issuance of a UOTHC Discharge Certificate.

16. The applicant was discharged on 2 March 1979. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 14-33b (1) and his service was characterized as UOTHC, with separation code JKA and reenlistment code RE-3B. He was credited with 11 months and 29 days of net active service, with 140 days of lost time.

17. Regulatory guidance provides when an individual is discharged under the provisions of AR 635-200, Chapter 14, by reason of misconduct, an UOTHC characterization of service is normally appropriate. However, the separation authority may direct a general discharge if merited by the Soldier's overall record.

18. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination 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 evidence shows the applicant committed a misconduct – frequent incidents of a discreditable nature serious offense, as evidenced by his continued AWOL, NJP, conviction by two courts-martial, and lack of response to counseling received from social workers, the leadership team, and unit cadre. As a result, his chain of command, initiated separation action against him. He received an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing.

Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service and reason for separation the applicant received upon separation were not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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, 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 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b states 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 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

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/NRs) 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//