

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 July 2024

DOCKET NUMBER: AR20230012595

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge and a personal appearance before the Board.

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 served honorably prior to his reenlistment. He experienced family problems while he served in Egypt. His mother got ill, and his family contacted the Red Cross. However, he was never contacted. The characterization of his discharge has haunted him for 43 years.
3. The applicant enlisted in the Regular Army on 1 October 1981. He reenlisted on 2 July 1984 for 6 years. The highest grade he attained was E-5.
4. On 7 October 1985, the applicant was reported absent without leave (AWOL) and remained absent until his apprehension by civil authorities on 6 March 1986.
5. On 10 March 1986, the applicant voluntarily declined a separation medical examination.
6. Court-martial charges were preferred against the applicant on 14 March 1986, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL from 7 October 1985 through 6 March 1986.

7. On 14 March 1986, 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 lieu of trial by court-martial. 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 declined to submit a statement in his own behalf.

8. The applicant's commander recommended approval of the applicant's request for discharge on 17 March 1986. The commander noted that based on the applicant's record, punishment could be expected to have a minimal rehabilitative effect.

9. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge in lieu of court-martial on 19 March 1986, and directed a UOTHC characterization of service and his reduction in grade to E-1.

10. The applicant was discharged on 18 April 1986, in the rank/grade of private/E-1. He was credited with 4 years, 1 month, and 19 days of net active service this period with 150 days of lost time. His DD Form 214 (Certificate of Release or Discharge from Active Duty) contains the following entries in:

- Item 24 (Character of Service) – UOTHC
- item 25 (Separation Authority) – AR [Army Regulation] 635-200, Chapter 10
- item 28 (Narrative Reason for Separation) – For the Good of the Service – in Lieu of Court-Martial

11. Additionally his DD Form 214 shows he was awarded or authorized the:

- Rifle M-16 Marksmanship Qualification Badge
- Hand Grenade Expert Qualification Badge
- Army Service Ribbon
- Expert Infantryman Badge
- Air Assault Badge

- Noncommissioned Officer Professional Development Ribbon (Primary Level)
- Good Conduct Medal
- Overseas Service Ribbon

12. The applicant's DD Form 214 does not show his continuous honorable active service period, information that is required for members who honorably served their first term of enlistment [see Administrative Notes].

13. The applicant petitioned the Army Discharge Review Board requesting upgrade of his UOTHC discharge. On 9 March 1988, the Board voted to deny relief and determined his discharge was both proper and equitable.

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:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. 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.

3. A majority of the Board found the applicant's statement compelling, noting that prior to his period of AWOL he had been promoted to sergeant/E-5, had been awarded the Good Conduct Medal, and had reenlisted, all of which lend support to his claim that he went AWOL in response to a family emergency. While a majority of the Board found his service was not fully honorable due to his unauthorized absence, based on a preponderance of the evidence, the majority determined his character of service should be changed to under honorable conditions (general). Because his reduction to the lowest enlisted grade was based on the original character of service, this correction will entail restoration of his rank.

4. The member in the minority insufficient evidence of in-service mitigating factors and noted 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 member in the minority determined the character of service the applicant received upon separation was not in error or unjust.

5. The Board concurs with the corrections described in the 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:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show the following entries and incorporate the corrections described in Administrative Note(s) below:

- Rank – SGT
- Grade – E-5
- Effective date of pay grade – 84 06 22
- Character of service – Under honorable conditions (general)

12/26/2024
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CHAIRPERSON
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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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214 is missing important entries that affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entries in item 18 (Remarks):

- CONTINUOUS HONORABLE SERVICE FROM 811001 UNTIL 840701
- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. 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. Army Regulation 635-8 (Separation Processing and Documents) provides: for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable, enter Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment). Then, enter the specific periods of reenlistment as prescribed above.

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//