

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 June 2024

DOCKET NUMBER: AR20230012988

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- amendment of his separation code

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

- DD Form 293 (Application for the Review of Discharge)
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 28 January 2002
- Two Letters of Support
- Police Record Check

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 enlisted for 4 years and his first 3 years serving he was an exemplary Soldier. He was awarded medals not reflected in his military records and extended to reclassify into a different military occupational specialty. He believed he should have been non-deployable; however, he received orders to deploy for training, he spoke to his chain of command but was informed he could go reclassify after this deployment for training.

a. When on the deployment to the Mojave Desert, he failed his physical fitness test and was told he could not attend the school but was still required to serve on the extension. He began to encounter marital issues, and requested leave, which was denied. He felt alone and nobody was advocating for him or listening to him. He felt he had no other choice but to go absent without leave (AWOL), he needed to work on his marriage because it was worth saving.

b. After going AWOL, he realized he made a poor decision, his marriage failed, and he had no place to live. He turned himself in and was sent to out-process. While out-processing he saw a judge advocate and was informed he could receive a court-martial or be released from the Army, he chose to be released but was unaware he would receive an under other than honorable conditions (UOTHC) discharge.

c. Several years later, he realized he received an UOTHC discharge and is requesting an upgrade. He believes his extension should not have been honored due to the fact that he should have been nondeployable. He knows if he could do it all over again, he would change everything. He has committed himself to being the best veteran he can be and volunteers to many veterans causes, he has become an upstanding member in society and has not committed any crimes, he does not deserve the repercussions for the act he committed while serving.

3. The applicant enlisted in the Regular Army on 27 January 1997.

4. The applicant went AWOL on or about 25 October 2000, he surrendered to military authorities on or about 27 March 2001.

5. Court-martial charges were preferred against the applicant on 2 April 2001, for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with going AWOL from on or about 25 October 2000 and remaining AWOL until on or about 27 March 2001.

6. On the same date, the applicant consulted with legal counsel 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 (Discharge in Lieu of Trial by Court-Martial). 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 under other than honorable conditions (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 not to submit a statement in his own behalf.

7. On 17 December 2001, the applicant's commander recommended approval of the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, and issuance of a UOTHC discharge.

8. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 10 January 2002 and further directed the applicant receive an UOTHC discharge, and he be reduced to the lowest enlisted grade of E-1.

9. He was discharged on 28 January 2002 under the provisions of AR 635-200, Chapter 10, in lieu of court martial, in the grade of E-1. He received an UOTHC characterization of service, a separation code of KFS, and reentry code of NA. He was credited with 4 years, 8 months, and 28 days of active service with lost time from 25 October 2000 to 26 January 2001 and from 27 January 2001 to 26 March 2001.

10. The applicant provides:

a. A character reference letter from the case manager for Volunteers of America, Florida. She states, in effect, the applicant shows consistent progress as a resident, abides by program rules, and is driven to improve himself and his standing the community. He shows exceptional character and strives to show compassion to his peers and staff.

b. A character reference letter from the clinical coordinator who has worked with the applicant since approximately July 2022, states the applicant demonstrated consistent progress and growth towards goals in the program and maintains stable mental health. He attends daily groups where he contributes valuable insight, experiences, wisdom, and knowledge for the groups. He keeps his apartment in excellent condition and provides assistance to the property maintenance. He is compassionate, empathic towards other Veterans in the program, while demonstrating and modeling a high level of character for all in the program to follow.

c. A local police record check, showing he has no record.

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:**

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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 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 being absent without leave (AWOL) from 25 October 2000 to 27 March 2001, 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 assigned by his commander during separation; however, the applicant provided several character reference letters outlining his post-service accomplishments and progress. As a matter of equity and compassion, the Board concluded that the characterization of service the applicant received should be upgraded to under honorable conditions (General).

2. Regarding the applicant's request to amend his separation code, the Board found no error or injustice in the assigned separation code at discharge 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:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 28 January 2002 to show in:

- item 24 (Character of Service): under honorable conditions (General)
- item 25 (Separation Authority): No change
- item 26 (Separation Code): No change
- item 27 (Reentry Code): No change
- item 28 (Narrative Reason for Separation): No change

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to amending his separation code.

7/1/2024

X [REDACTED]

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CHAIRPERSON  
[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. AR 635-5-1 (Separation Program Designator (SPD) Codes) states that separation codes are three-character alphabetic combinations that identify reasons for and types of separation from active duty. Separation codes and corresponding narrative reasons are aligned with applicable regulatory authority paragraphs. The regulation provides that the separation code "KFS" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, by narrative reason of "in lieu of trial by court-martial."

3. AR 635-200, in effect at the time, provided guidance for the administrative separation of enlisted personnel:

a. Chapter 10 of this regulation provided a member who has committed an offense or offenses, the punishment for which, under the UCMJ and the Manual for Courts-Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the Service. The discharge request may be submitted after court-martial charges are preferred against the member, or, until final action on the case by the court-martial convening authority. A member who is-under a suspended sentence of a punitive discharge may also submit a request for discharge for the good of the Service. An UOTHC discharge certificate normally is appropriate for a member who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. An UOTHC discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and the good of the service.

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. 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//