

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 August 2024

DOCKET NUMBER: AR20230013519

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to under honorable conditions (general).

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 17 October 2023
- self-authored statement, 17 October 2023
- DD Form 4 (Enlistment Contract – Armed Forces of the United States), 5 August 1974
- DA Forms 268 (Report for Suspension of Favorable Personnel Actions) (three)
- DD Forms 458 (Charge Sheets) (two)
- DA Form 4187 (Personnel Action), 5 April 1977
- Disposition Form, Request for Discharge for the Good of the Service, 5 April 1977
- Commander's Recommendations
- Separation Authority Approval, 14 April 1977
- DD Form 214 (Report of Separation from Active Duty), 21 April 1977
- DA Form 2166-5 (Enlisted Evaluation Report), 19 December 1977
- Army Board for Correction of Military Records (ABCMR) Case, AR20060000581, 15 August 2006
- National Personnel Record Center correspondence, 24 April 2015

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20060000581 on 15 August 2006.

2. The applicant states, in effect, his company was going to Germany for a year, and he requested to change companies due to his mother being ill with breast cancer. He was told no and three weeks before his company was to leave for Germany, he was put under barracks arrest. He lost everything, he had no money, and little uniforms. His

fellow Soldiers helped him make money by working on tasks such as polishing brass, shining shoes, ironing clothes and uniforms. One day he received help from others to leave, which he knew he should not have done. He went home to his mother who had become terminally ill due to the cancer, he knew he had done the right thing by leaving. When he came back to the installation, he was told either receive a court-martial, spend time in jail, and receive a dishonorable discharge or just receive a dishonorable discharge. Additionally, he believes while in the Army he may have contracted hepatitis.

3. The applicant enlisted in the Regular Army on 5 August 1974, for a 3-year period. He was awarded the military occupational specialty of 31B (Field Radio Mechanic) and the highest rank he attained was specialist four/E-4.

4. On 11 November 1975, the applicant was flagged due to an investigation stating he was pending trial for attempted burglary of a vehicle, he was under military control.

5. Court-martial charges were preferred against the applicant, for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged on 17 November 1976, with the following:

- he went absent without leave (AWOL) on or about 1 November 1976 and remained AWOL until an unknown date
- he went AWOL on or about 18 June 1976 and remained AWOL until on or about 27 June 1976
- he went AWOL on or about 10 July 1976 and remained AWOL until on or about 24 August 1976
- he missed movement on or about 5 October 1976

6. A DA form 4187 (Personnel Action) shows the applicant's duty status changed from dropped from unit rolls to attached, present for duty effective 31 March 1977. Additionally stating the applicant surrendered himself to military authorities and had been AWOL since 1 November 1976.

7. Court-martial charges were preferred against him, for violation of the UCMJ. The DD Form 458 shows on 4 April 1977, he was charged with going AWOL on or about 1 November 1976 and remaining AWOL until on or about 31 March 1977.

8. The applicant consulted with legal counsel on 5 April 1977. After consulting with counsel, he 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 for the Good of the Service). 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 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.

9. On 12 April 1977, the applicant's immediate and intermediate commander's recommended approval of the applicant's request for discharge for the good of the service. The immediate commander stated the applicant was charged with being AWOL a total of 150 days when he surrendered to military authorities, they recommended he receive a UOTHC discharge.

10. The separation authority approved the applicant's request for discharge on 14 April 1977, in lieu of court-martial. He directed the applicant be reduced to the lowest enlisted grade and issuance of a DD Form 794A (UOTHC Discharge Certificate).

11. The applicant was discharged accordingly on 21 April 1977, under the provisions of AR 635-200, Chapter 10, in the grade of E-1. His DD Form 214 confirms his service was characterized as UOTHC, with separation program designator code JFS and reenlistment code RE-3B. His net active service was not verified, he had a total of 167 days of lost time.

12. The applicant provides:

a. Three DA Forms 268 (Report for Suspension of Favorable Personnel Actions) dated 16 November 1976, showing the applicant was dropped from rolls and AWOL, he was flagged as a result of being AWOL.

b. His separation packet which included DD Forms 458 (Charge Sheets), request for discharge, memorandums of approval, and his Enlisted Evaluation Report showing he received an evaluation score of 30 out of 30.

c. ABCMR Docket Number AR20060000581, showing he was denied his previous request for discharge upgrade. Additionally, a letter from the National Personnel Records Center stating he received his separation document as requested.

13. The ABCMR reviewed the applicant's request for an upgrade of his UOTHC character of service on 15 August 2006. The Board determined that the evidence presented did not demonstrate the existence of a probable error or injustice and that the overall merits of the case were insufficient as a basis for correction of the applicant's records.

14. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service. An UOTHC characterization of service is normally considered appropriate.

15. 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:

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 was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry 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 in support of a clemency determination. Therefore, based on a preponderance of available 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 to amend the decision of the ABCMR set forth in Docket Number AR20060000581 on 15 August 2006.

█

---

█ █

---

█

█

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. 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 discharge under other than honorable conditions 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.

2. 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//