

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 August 2024

DOCKET NUMBER: AR20230013521

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to under honorable conditions (General).

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 that he was discharged under other than honorable conditions, as he was guilty by proxy. He says he was out with a friend who was intoxicated and angry at the thought of his wife having an affair; and his friend's anger resulted in him breaking the window of a civilian's car. He attempted to stop his friend but was unable to do so. Since he was present with his friend at the time of the property damage, he was considered to be guilty as well, and was subsequently reduced in rank from specialist (SPC)/E-4 to private (PVT)/E-1 and discharged. Additionally, he states he had no other problems during his time in service and was an exemplary Soldier, therefore, his discharge is not accurately reflected.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 29 October 1981.
 - b. DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice), dated 11 October 1984, shows the applicant accepted nonjudicial punishment (NJP) for violating Article 80 (Attempts) of the UCMJ, by attempting to steal a privately owned vehicle. His punishment included reduction to PVT/E-1; forfeiture of \$400 per month for one month, and 30 days correctional custody.

c. DA Form 2627, dated 7 December 1984, shows the applicant accepted NJP for violating Article 112a (Wrongful use, possession, etc., of controlled substances) of the UCMJ, by wrongfully using marijuana on an unknown date between on or about 13 August 1984 and 20 August 1984. His punishment included forfeiture of \$275 per month for one month, 21 days restriction, and 7 days of extra duty.

d. Three DA Forms 4187 (Personnel Action) shows the applicants duty status as follows:

- present for duty to absent without leave (AWOL), effective 1 April 1985
- AWOL to dropped from rolls, effective 30 April 1985
- dropped from rolls to attached/present for duty, effective 23 September 1985

e. DA Form 3836 (Notice of Return of US Army Member from Unauthorized Absence), dated 30 September 1985, shows the applicant surrendered to military authorities on 23 September 1985.

f. DD Form 458 (Charge Sheet), preferred court-martial charges on 26 September 1985, for violation of the UCMJ for one specification of violating Article 86, on or about 1 April 1985, by absenting himself from his organization, located at Fort Hood, TX, and did remain so absent until on or about 23 September 1985.

g. On 27 September 1985, he voluntarily requested discharge for the good of the service, in accordance with Chapter 10, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel). In his request for discharge, he acknowledged he understood if the discharge request were approved, he might be discharged under other than honorable conditions and be furnished an Other than Honorable Discharge Certificate. He also acknowledged he understood he might be deprived of many or all Army benefits, he might be ineligible for many or all benefits administered by the Department of Veterans Affairs, he might be deprived of his rights and benefits as a veteran under both Federal and State laws, and he might expect to encounter substantial prejudice in civilian life.

h. On 30 September 1985, the immediate and intermediate commanders recommended approval of the request for discharge with an under other than honorable conditions characterization of service.

i. On 8 October 1985, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial and directed a discharge under other than honorable conditions.

j. He was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of court-martial on 1 November 1985. His discharge

was characterized as under other than honorable conditions with a separation code of KFS, and reentry code 3B, 3C. He completed 3 years, 6 months, and 11 days of active service. His DD Form 214 shows in:

- block 24 (Character of Service): Under Other than Honorable Conditions
- block 25 (Separation Authority): AR 635-200, Chapter 10
- block 29 (Dates of Time Lost During this Period): 850401 – 850922

4. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. By regulation, AR 635-200, in effect at the time, states an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

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 Department of Defense 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 from 1 April 1985 to 23 September 1985, 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. Based on a preponderance of the evidence, the Board concluded that the characterization 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 for correction of the records of the individual concerned.

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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.

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 635-5 (Separation Documents) states:

a. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

b. For block 24 (Character of Service) the correct entry is vital as it affects a soldiers' eligibility for post-service benefits. Characterization or description of service is determined by directives authorizing separation. The entry must be one of the following: honorable, under honorable conditions (general), under other than honorable conditions, bad conduct, dishonorable, or uncharacterized.

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

a. Chapter 10 provided that a Soldier who committed an offense or offenses, the punishment for which 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 Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not being coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of

service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

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//