

IN THE CASE OF: ██████████

BOARD DATE: 8 August 2024

DOCKET NUMBER: AR20230013628

APPLICANT REQUESTS: reconsideration of his previous request to upgrade his under other than honorable conditions discharge to honorable.

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)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR202200052682 on 8 December 2022.

2. The applicant states he does not know why he received an under other than honorable conditions characterization of service. He was never in trouble and should have received an honorable discharge.

3. The applicant enlisted in the Regular Army on 7 April 1983 for 3 years. He was trained in and held military occupational specialty 11B (Infantryman). The highest grade he held was E-3.

4. The applicant served at Schofield Barracks, in Hawaii from 29 July 1983 until on or about 27 September 1984, assigned to 1st Battalion, 27th Infantry. While there:

a. He received nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 2 May 1984, for six counts of failing to go at the time prescribed to his appointed place of duty; one count of failing to obey a lawful order, and one count of wrongfully communicating a threat to injure a staff sergeant.

b. His punishment included reduction from E-3 to E-2, forfeiture of pay for \$156 pay (suspended), and extra duty and restriction. (On 9 May 1984, the suspended portion of the punishment for forfeiture of \$156 was vacated.

5. On 11 May 1984, the applicant's unit reported him in an absent without leave (AWOL) status and on 10 June 1984, he was dropped from the rolls as a deserter. He was apprehended by civilian authorities at [REDACTED] on 19 July 1984 and returned to military control same date and place.

6. The applicant was assigned to the Special Control Facility, Fort Knox, KY pending determination of AWOL/DFR status from Schofield Bks, HI.

7. On 25 July 1984, court-martial charges were preferred against the applicant. The relevant DD Form 458 (Charge Sheet) shows he was charged with one specification of AWOL from on or about 11 May 1984 until on or about 19 July 1984.

8. Also on 25 July 1984, 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 an under other than honorable conditions discharge; and the procedures and rights that were available to him. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 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, the applicant:

- indicated he was making this request of his own free will and have not been subjected to any coercion whatsoever by any person and has been advised of the implications that are attached to it.
- acknowledge that by submitting this request for discharge, he is guilty of the charge(s) against him or of (a) lesser included offense(s) therein contained which also authorize(s) the imposition of a bad conduct or dishonorable discharge
- stated that under no circumstances does he desire further rehabilitation, for he has no desire to perform further military service.
- 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 & benefits as a veteran under both Federal and State laws
- waived his right to a separation medical evaluation and to submit a statement on his own behalf.

9. On 25 July 1984, the applicant's immediate commander recommended approval of the request for discharge and recommended he receive an under other than honorable conditions discharge. The immediate commander stated that the applicant's conduct has rendered him triable by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge. Based on his previous record, punishment can be expected to have a minimal rehabilitative effect. Discharge is in the best interest of

all concerned. There does not appear to be any reasonable ground to believe that the individual is/was at time of his misconduct, mentally defective, deranged, or abnormal.

10. On 6 September 1984, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial, and directed the applicant be reduced to the lowest enlisted grade and receive an Under Other Than Honorable Conditions Discharge Certificate.

11. The applicant was discharged on 27 September 1984. His DD Form 214 confirms he was discharged under the provisions of AR 635-200, Chapter 10, for the good of the service - in lieu of trial by court-martial, and his service was characterized as under other than honorable conditions (Separation Code KFS and Reenlistment Code 3/3B). He was credited with 1 year, 3 months, and 13 days of net active service with 69 days of lost time. He was awarded or authorized: Army Service Ribbon, Marksman Qualification Badge w/Rifle Bar, and Expert Qualification Badge w/Hand Grenade Bar.

12. There is no indication the applicant petitioned the Army Discharge Review Board for review of his discharge processing within that board's 15-year statute of limitations.

13. On 8 December 2022, this Board considered his request for an upgrade of his discharge. After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to a pattern of misconduct leading to the applicant's separation, the Board concluded there was insufficient evidence of an error or injustice warranting the change of the applicant's characterization of service.

14. In reaching its determination, the Board can consider the applicant's petition and his service 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 was charged with commission of offense(s) (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 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 available evidence, the Board determined that the character of service the applicant received upon separation was 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 to amend the decision of the ABCMR set forth in Docket Number AR202200052682 on 8 December 2022.

8/8/2024

X [REDACTED]

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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides 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.

a. Paragraph 3-7a states 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 that 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/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. 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, BCM/NRs 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. 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.

3. 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. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing or

request additional evidence or opinions. Additionally, 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.

//NOTHING FOLLOWS//