

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 August 2024

DOCKET NUMBER: AR20230013703

APPLICANT REQUESTS:

- reconsideration of his previous request to upgrade his characterization of service from under other than honorable conditions (UOTHC) to under honorable conditions (general)
- personal appearance before the Board via video/telephone.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record), 25 September 2023

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 AR20130019746 on 2 July 2014.
2. The applicant states, in effect, he feels he did not deserve an UOTHC discharge. Due to his father being ill, he went absent without leave (AWOL) for approximately two weeks, when he came back, he was told to either take an UOTHC discharge or request a hardship discharge. His father was dying, he could not afford to take time and wait for a hardship discharge to be approved. He accepted the UOTHC discharge and was able to make it home before his father passed.
3. The applicant enlisted in the Regular Army on 6 April 1971, for a 3-year period. He was awarded the military occupational specialty of 94A (Cooks Apprentice) and the highest rank he attained was private/E-2.
4. His DA Form 2-1 (Enlisted Qualification Record) shows he went AWOL on or about 18 September 1971 and remained AWOL until on or about 22 November 1971.
5. Court-martial charges were preferred against the applicant, for violation of the Uniform Code of Military Justice. However, the relevant DD Form 458 (Charge Sheet) is not available for review.

6. The applicant consulted with legal counsel on 8 December 1971, 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 for the Good of the Service). He acknowledged his understanding of the following in his request:

a. He had not been subject to coercion with respect to his request for discharge and he had been advised of the implications that were attached to the request.

b. He understood if his request for discharge was accepted, he may be discharged with a UOTHC discharge and furnished an undesirable discharge certificate. He further understood he may be ineligible for many or all benefits administered by the Veterans' Administration, and he may be deprived of all his rights and benefits as a veteran under both Federal and State Law. He also understood he may encounter substantial prejudice in civilian life.

c. He Additionally submitted a statement on his behalf, stating in effect, he felt he could better benefit his family by being out and closer to his home where he needed to know what was going on and be able to help his family more.

7. On 29 December 1971, the applicant's commander recommended approval of his request for discharge, with the issuance of an undesirable discharge. The chain of command concurred.

8. On 3 January 1972, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He directed issuance of DD Form 258A (Undesirable Discharge Certificate) and reduction to the lowest enlisted grade.

9. The applicant was discharged accordingly on 6 January 1972, under the provisions of AR 635-200, for the good of the service. His DD Form 214 (Certificate of Discharge or Release from Active Duty) confirms his service was characterized as UOTHC with reenlistment code RE-4, 3B. He was credited with 6 months and 26 days of net active service this period, with time lost from 18 September 1971 to 22 November 1971, totaling 66 days.

10. On 2 July 2014, the ABCMR denied his request for discharge upgrade, stating the evidence presented did not demonstrate the existence of a probable error or injustice. The Board determined the overall merits of the case were insufficient as a basis for correction of the applicant's record.

11. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC characterization of service is normally considered appropriate.

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. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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 applicant's Charge Sheet is not available for review. However, other available evidence shows the applicant was charged with commission of offense(s) 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 available 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 were 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 AR20130019746 on 2 July 2014.

8/14/2024

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. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides the ABCMR may, in its discretion, hold a hearing. 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.
2. 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.

3. 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//