

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 August 2024

DOCKET NUMBER: AR20230013795

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge.

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

- DD Form 293 (Application for the Review of Discharge)
- Character Letter and Email

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 would like the character of his discharge upgraded.
3. The applicant enlisted in the Regular Army on 7 April 1980 for three years. His military occupational specialty was 19E (Armor Crewman).
4. The applicant accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ) on 6 November 1980 for being found sleeping on guard duty on or about 31 October 1980. His punishment consisted of forfeiture of \$115.00, extra duty and restriction.
5. The applicant was absent without leave (AWOL) on 16 April 1981 and present for duty (PDY) on 20 April 1981. He was again AWOL on 1 June 1981 and PDY on 2 June 1981.
6. The applicant accepted NJP under Article 15 of the UCMJ on 9 June 1981 for willfully disobeying a lawful order from his superior officer to pull extra duty from on or about 28 May 1981 through 10 June 1981 and on or about 3 June 1981. His punishment consisted of extra duty, and forfeiture of \$125.00 (suspended).

a. The applicant provided a statement on 9 June 1981. He stated he had been under a lot of stress during the last week. His family was starving. He was late because he was riding across town trying to find a place to cook for his son. He and his wife had not been eating for two or three days at a time and feeding the son a light meal a day trying to stretch his food. They are in the dark with no utilities nor gas. His wife is afraid to stay alone so he has to take her to a friend before reporting to duty.

b. Creditors are hassling him about bills from the past. He is doing his best to pay them off. He feels he can make it in the service. He does not want out. He would like a chance to prove himself. He also loves his family and does not want them to suffer. He knows he can make it if given the chance he needs.

7. The applicant was AWOL on 20 July 1981 and dropped from the rolls on 19 August 1981. He surrendered to military authorities and was PDY on 22 December 1981.

8. Court martial charges were preferred against the applicant on 19 January 1982 for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 20 July 1981 until on or about 22 December 1981.

9. The applicant consulted with legal counsel on 20 January 1982 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 a UOTHC discharge; the procedures and rights that were available to him. After consulting with 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. He further 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 and benefits as a veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life because of an UOTHC discharge. He elected not to submit statements in his own behalf.

10. The applicant's commander recommended approval of his request for discharge in lieu of trial by court martial. The commander noted the applicant was aware of the nature of the interview and the consequences of a UOTHC discharge. The applicant stated he departed AWOL due to family problems. He wasn't making enough money to support his family. He tried to be a good Soldier, but his only desire now is to get out of the Army and that he will go AWOL again if forced to stay in the service. In view of the applicant's attitude toward the military, and his lack of rehabilitative potential the commander recommended he be discharged UOTHC.

11. A Report of Mental Status Evaluation, dated 20 January 1982 shows the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible and met retention requirements.
12. The applicant's chain of command recommended approval and recommended the applicant be furnished a UOTHC discharge.
13. The separation authority approved the applicant's request for discharge on 26 February 1982, and directed the applicant's reduction to the lowest enlisted grade with a UOTHC discharge.
14. The applicant was discharged on 15 March 1982. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, Chapter 10, for conduct triable by court-martial, with Separation Code JFS and Reenlistment Code 3, 3B. His service was characterized as UOTHC. He completed 1 year, 6 months, and 3 days of active service with two periods of lost time.
15. The applicant provides:
 - A character letter that attests to his character, demeanor, and judgment. The author is grateful to call the applicant his friend. He serves his community, family, and friends daily.
 - An email attesting to the applicant's service to his community and church by providing transportation to appointments, grocery store, pharmacy, etc. for those in need.
16. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that 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 available evidence shows the applicant was charged with commission of offenses (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 available separation processing. The applicant provides two statements in support of a clemency determination. They speak of his character,

demeanor, and judgment, as well as his service to his church, family, and community. The Board accepted these letters and determined that while his service did not rise to the level required for an honorable characterization (given his more than 130 days of lost time due to AWOL); a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 15 March 1983, as follows:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

■

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, USC, 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 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

3. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018 [Wilkie Memorandum], 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 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 grounds.

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//