

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2024

DOCKET NUMBER: AR20230013843

APPLICANT REQUESTS: Reconsideration of previous request for upgrade of his under other than honorable conditions (UOTHC).

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

- DD Form 293 (Application for the Review of Discharge)
- National Personnel Records Center (NPRC) Letter

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 AC-75-02213A on 18 August 1982.
2. The applicant states in April or May 1972, he was charged with being absent without leave (AWOL) from his company at Fort Dix, NJ. While in the stockade he was informed of his charges, and he explained he was never assigned to said company. He was given the option to either do 11 months in the stockade or to sign himself out. During his first hearing with the board, he informed them of the circumstances. In response, he got two sets of morning reports from the unit. One was the date of the AWOL. The other was on the date of the AWOL and 30 days forward. Both stated that he was never assigned there. After submitting these reports, he was told because of the discrepancy of his records he was denied. First, he was charged with AWOL which proved to be false then he was punished for the discrepancy with his records and now he is being punished again for the work of the administrator of his records.
3. The applicant enlisted in the Regular Army on 26 April 1973. He did not complete training and was not awarded a military occupational specialty.
4. The applicant was AWOL from 23 June 1971 to 23 November 1971 and 17 December 1971 to 2 January 1972.
5. The applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on 29 April 1971, for having received a lawful order

willfully disobeyed the same on or about 29 April 1971. His punishment consisted of forfeiture of \$31.00 pay for one month.

6. The applicant was AWOL and dropped from the rolls on 3 May 1972.

7. The applicant was arrested on 14 March 1973 for assault and confined at Rikers Island, NY pending trial on 10 April 1973.

8. The DA Form 3836 (Notice of Return of the U.S. Army Member from Unauthorized Absence), shows the applicant was apprehended by civil authorities for the commission of an offense on 10 April 1973. He was released from Rikers Island after serving a 30-day sentence that he received for attempted assault.

9. Court martial charges were preferred against the applicant for violations of the UCMJ on 16 April 1973. His DD Form 458 (Charge Sheet) shows he was charged with AWOL from on or about 3 May 1972 to 10 April 1973 and 23 June 1971 to 23 November 1971.

10. The applicant was medically qualified for separation.

11. The applicant's commander recommended he be tried by a special court martial.

12. The applicant consulted with legal counsel on 24 April 1973 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 undesirable discharge; the procedures and rights that were available to him.

a. After consulting with legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Separations), 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 VA, 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.

b. He elected not to submit statements in his own behalf.

13. The applicant's immediate commander recommended the applicant be discharged with an undesirable service characterization. In his opinion the applicant had no motivation for continued service and would not respond to either counseling or rehabilitation. The chain of command recommended approval.

14. An Administrative Determination of Lost Time memorandum, dated 30 April 1973, shows an informal investigation found the applicant's absence was unauthorized. His 2-year enlistment contract would be extended by 47 days.
15. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial and directed the issuance of an DD Form 258A (Undesirable Discharge Certificate) with reduction to the lowest enlisted grade.
16. The applicant was discharged on 29 May 1973. His DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) shows he was discharged under the provisions of AR 635-200, paragraph 10, for the good of the service-in lieu of trial by court-martial, with Separation Program Number 246 and Reenlistment Code 4. He completed 8 months and 10 days of net active service, with 543 days of lost time. His service was characterized as UOTHC. His awards include the National Defense Service Medal.
17. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.
18. The applicant provides a NPRC letter, dated 24 August 2023 that shows the agency has no authority to review and approve amendments or corrections to military records and directed the applicant to the ABCMR.
19. On 12 February 1975, the Army Discharge Review Board (ADRB) determined the applicant was properly discharge and denied his request for an upgrade of his discharge.
20. On 28 April 1975, the ABCMR considered the applicant's request for discharge upgrade. By letter, dated 2 June 1975, he was informed that his request for relief was denied.
21. On 17 July 1979, the Office of the Adjutant General Reserve Components Personnel and Administration Center, St. Louis, MO, informed the applicant that his discharge characterization made him ineligible for receipt of Veterans Administration benefits regardless of any action taken by the ADRB.
22. On 18 August 1982, the ABCMR determined the applicant failed to submit sufficient relevant evidence to demonstrate the existence of probable material error or injustice to warrant a formal hearing. On 7 September 1982, the applicant was informed that it was unanimously determined the new evidence and contentions raised in his reconsideration request did not warrant a reversal of the Board's earlier decision.

23. On 15 July 1994, the ABCMR notified the applicant that the ABCMR may deny an application without a formal hearing if insufficient evidence had been presented to indicate probable material error or injustice. His previous application was previously considered and denied by the Board.

24. On 2 April 2011, the ABCMR letter shows a case was considered and denied by the ABCMR in Docket Number AC75-02213A on 18 August 1982. The applicant could request reconsideration of an earlier ABCMR decision if the request was received within one year of the ABCMR's original decision and had not previously been reconsidered.

25. 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:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of her characterization of service. Upon review of the applicant's petition and available military record, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of being AWOL on two separate occasions.

2. The Board noted, the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 8 months and 10 days of net active service, with 543 days of lost time. Furthermore, the Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge. Therefore, the Board determined reversal of the previous Board decision is without merit and denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 AC-75-02213A on 18 August 1982.

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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. Army Regulation 635-200 200 (Personnel Separations-Enlisted Separations) 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 of the version in effect at the time provided that a member who 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 at any time after court-martial charges were preferred. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses charged, type of discharge normally given under the provisions of this chapter, the loss of Veterans Administration benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. An Undesirable Discharge Certificate would normally be furnished an individual who was discharged for the good of the Service.

2. 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//