

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2024

DOCKET NUMBER: AR20230013998

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) character of service to honorable. Additionally, he requests an appearance before the Board via video or telephone.

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

DD Form 149 (Application for Correction of Military Record)

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 AR20140014682 on 2 April 2015.
2. The applicant states, in effect, there was a misunderstanding about receiving a hardship discharge. His mother was in jail and going to be sent to a mental institution if he did not take custody of her. He was one day over his leave when he was arrested by local police. He was just trying to take care of his family.
3. The applicant enlisted in the Army National Guard on 23 June 1978. He was ordered to active duty for the completion of initial entry training on 9 July 1978. He was relieved from active duty on 9 November 1978. He was awarded military occupational specialty 63H (Automotive Repairman) and issued an honorable character of service. He was credited with 4 months and 1 day of net active service.
4. He was transferred to the U.S. Army Reserve. Orders Number 155-157, Headquarters, Fifth U.S. Army, Fort Sam Houston, TX, shows he was involuntarily ordered to active duty on 26 September 1979.
5. The applicant's DD Form 2-1 (Personnel Qualification Record – Part II) shows he was absent without leave (AWOL) for 15 days from 26 September 1979 to 8 October 1979.
6. He served in the Republic of Korea from 24 October 1979 to 23 October 1980.

7. The applicant was reported AWOL on 6 June 1980 and was subsequently dropped from the rolls on 5 July 1980. He was apprehended by civilian authorities on 15 October 1980 and returned to military control on that same date.

8. A statement of option, dated 20 October 1980, shows he declined a separation medical examination.

9. The applicant underwent a mental status evaluation on 21 October 1980. He was psychiatrically cleared for any administrative action deemed appropriate by the command.

10. Court-martial charges were preferred against the applicant on 28 October 1980 for a violation of the Uniform Code of Military Justice. The relevant DD Form 158 (Charge Sheet) shows he was charged with being AWOL, from on or about 6 June 1980 until on or about 15 October 1980.

11. The applicant consulted with legal counsel on 28 October 1980.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge for the good of the service, under the provision of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged his understanding that by requesting a discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged making this request free of coercion. He further acknowledged understanding if his discharge request were 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.

c. He was advised he could submit any statements he desired in his own behalf. He elected not to submit a statement.

12. The applicant's immediate commander recommended approval of the request for discharge for the good of the service, further recommending a UOTHC discharge.

13. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial, on 13 November 1980, and further directed the applicant be

reduced to private/E-1 and the issuance of a DD Form 794A (UOTHC Discharge Certificate).

14. The applicant was discharged on 21 November 1980, under the provisions of AR 635-200, Chapter 10, by reason of conduct triable by court-martial. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his character of service was UOTHC, with separation code JFS and reenlistment code RE-3B. He was credited with 8 months and 20 days of net active service, with lost time from 26 September 1979 to 8 October 1979 and 5 June 1980 to 14 October 1980.

15. The ABCMR reviewed the applicant's request for an upgrade of his UOTHC character of service on 2 April 2015. After careful consideration, the Board determined that based upon his two periods of AWOL and his admission of guilt, his service did not meet the standards of acceptable conduct. His request was denied.

16. 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. A UOTHC characterization of service is normally considered appropriate.

17. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination 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 his characterization of service. Upon review of the applicant's petition and available military records, the Board found insufficient evidence of in-service mitigating circumstances to overcome the nature and gravity of the applicant's misconduct. The record documents multiple instances of unauthorized absence (AWOL) and apprehension by civil authorities, which significantly undermined the applicant's military service.

2. The Board noted, the applicant did not provide any evidence of post-service achievements, rehabilitation efforts, or character references to support a clemency determination. His enlistment, totaling 8 months and 20 days of net active service, was further impacted by lost time from 26 September 1979 to 8 October 1979 and again from 5 June 1980 to 14 October 1980 due to AWOL periods. The Board concluded that the applicant's conduct does not warrant relief and that the discharge under other than

honorable conditions (UOTHC) was appropriate given the circumstances. As such, the Board determined that the applicant has not demonstrated by a preponderance of evidence any error or injustice and denied the request for upgrade of discharge.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

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 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 AR20140014682 on 2 April 2015.

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CHAIRPERSON

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. prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. Paragraph 3-7a provides 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.

c. Paragraph 3-7b provides 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.

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//