

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 August 2024

DOCKET NUMBER: AR20230014131

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

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- DD Form 214 (Report of Separation from Active Duty)

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:

a. As a teenager he was always getting in trouble. The police advised his dad to have him join the Army, which was not a good solution, it was not conducive to his situation and although he eased through basic training he had trouble with constraints. He has been embarrassed his whole life and he feels at his young age he was not ready for the Army. He was essentially forced to go in. He is not a bad person. After the Army he was a single dad, his son is now a Vice Principal.

b. He was barely 18 years old and in most ways, a delinquent when he was discharged in 1977. He grew up in an abusive home and was sent to a youth correctional facility at 15 years old for being uncontrollable. When he left the Army, he was on the straight and narrow and his son has multiple degrees. He would like a review because of his stupidity and being so immature.

3. In conjunction with his enlistment a moral eligibility determination was completed for breaking and entering (charges dismissed) and larceny under \$100.00 (to serve 30 days (suspended) and 6 months' probation (terminated)).

4. The applicant enlisted in the Regular Army on 29 March 1977 for three years. He did not complete training and was not awarded a military occupational specialty.
5. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 6 July 1977, for without authority failure to go at the time prescribed to his appointed place of duty on or about 3 July 1977. His punishment consisted of forfeiture of \$75.00 for a month, restriction, and extra duty.
6. A Disposition of Student form, dated 19 July 1977 shows the action requested by the training division, was relief. The applicant is far behind his peers because of unauthorized absences, sleeping in class, lack of interest and negative attitude. He is a disruptive individual in the classroom and if not removed will become a disciplinary problem. The effective date of relief was 22 July 1977.
7. The applicant was absent without leave (AWOL) on 1 August 1977 and present for duty on 5 August 1977.
8. The applicant accepted NJP under Article 15 of the UCMJ on:
 - 8 August 1977, for AWOL on or about 1 August 1977 until 5 August 1977; his punishment consisted of forfeiture of \$87.00 for a month, extra duty, and restriction
 - 4 September 1977, for AWOL on or about 21 August 1977 until 24 August 1977; his punishment consisted of forfeiture of \$87.00 pay, extra duty, and restriction
9. A Mental Health Evaluation, dated 9 September 1977 shows the applicant was evaluated on 2 September 1977 at the request of his unit commander. Although there was no indication of a severe psychiatric disorder, the applicant firmly indicated a negative attitude toward completing his military obligation and performing his assigned tasks in the expected manner. He does not appear to benefit by attempts to improve his performance and attitude. Retention would result in more displays of inappropriate behavior or more severe disciplinary actions. He was cleared for any administrative action deemed appropriate by command.
10. The applicant accepted NJP under Article 15 of the UCMJ on 26 September 1977, for wrongfully having in his possession 0.3 grams, more or less, of marijuana on or about 24 September 1977. His punishment consisted of forfeiture of \$87.00 for one-month and 7 days in correctional custody.
11. Orders 192-63, dated 3 October 1977, issued by the U.S. Army transportation Center, Fort Eustis, VA, show the applicant was reassigned to Company F to attend a school course, starting on 11 October 1977.

12. Court martial charges were preferred against the applicant on 19 October 1977 for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with

- Four specifications of failure to go at the time prescribed to his appointed place of duty on or about 12 October 1977 (twice), on or about 17 October 1977 and 19 October 1977
- One specification of willfully disobeying a lawful order on or about 12 October 1977

13. The applicant's commander recommended trial by summary court martial.

14. The applicant consulted with legal counsel on 2 December 1977 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.

a. 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.

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

15. The applicant's commander recommended approval of his request for discharge in lieu of trial by court martial. He noted the applicant was less than a marginal Soldier. His total disregard for the military and his complete lack of personal motivation makes him unsuitable for active service.

16. The applicant's chain of command recommended approval. The applicant demonstrated that he was incapable of performing his duties without disciplinary problems. He has been given ample opportunity to be rehabilitated without success and recommended the applicant be furnished a discharge UOTHC.

17. The separation authority's approval memorandum is not available for review.

18. A Statement of Medical Condition, dated 16 December 1977 shows the applicant underwent a separation examination on 7 December 1977 and there had been no change in his medical condition since the examination.

19. The applicant was discharged on 16 December 1977. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 10, with Separation Program Designator JFS (for the good of the service – in lieu of court-martial) and Reenlistment Code 3 and 3B. His service was characterized as UOTHC. He completed 8 months and 9 days of net active service, with 9 days of lost time.

20. 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.

21. The applicant provides a copy of his DD Form 214 and a self-authored statement.

22. In reaching its determination, the Board can consider the applicant's petition and 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, while in initial entry training, and following multiple NJPs and relief from MOS training, the applicant was further charged with commission of offenses (four instances of failing to go to his appointed place of duty and disobeying orders) 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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 for correction of the records of the individual concerned.

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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. 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//