

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2024

DOCKET NUMBER: AR20230014174

APPLICANT REQUESTS: an upgrade to his under other than honorable conditions (UOTHC) discharge to an honorable

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 his UOTHC discharge upgraded to an honorable. He was ready to travel anywhere in the world and fight. At the end of his advanced individual training (AIT) he was selected among 217 other Soldiers to receive letters of commendation from the Army. During this time, he also earned his expert infantryman badge (EIB) and qualified expert with all weapons. He felt the training he received was to defend his country and not to sit behind a desk.
3. The applicant's service record reflects the following:
  - a. He enlisted in the Regular Army on 4 January 1980.
  - b. DA Forms 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) reflect the applicant received the following non-judicial punishments under the provisions of Article 15, UCMJ:
    - (1) On 18 June 1980, for: without authority failing to go at the prescribed time to his appointed place of duty, a violation of Article 82, UCMJ. His punishment consisted of

forfeiture of pay of \$50.00-, and seven-days extra duty, part of the punishment is illegible on the form. He did not appeal.

(2) On 11 August 1980, for: without authority failing to go at the prescribed time to his appointed place of duty, a violation of Article 82, UCMJ. His punishment consisted of seven days in a correctional custody facility (CCF), reduction to the grade of private/E-1 and forfeiture of pay of \$100.00 (suspended for 90 days). He did not appeal.

(3) On 17 August 1980, for: without authority failing to go at the prescribed time to his appointed place of duty, a violation of Article 82, UCMJ. His punishment consisted of 30 days in a CCF, and 50 percent (%) forfeiture of his monthly pay, for one month (suspended for 90 days). He did not appeal.

c. DA Forms 4187 (Personnel Action Form) reflects the following changes in the applicant's duty status:

- 3 September 1980, present for duty (PDY) to absent without leave (AWOL)
- 5 September 1980, AWOL to PDY
- 3 October 1980, PDY to AWOL
- 10 October 1980, AWOL to PDY
- 16 October 1980, PDY to AWOL

d. The applicant's record is void of documentation which shows he was pending a court-martial and requested discharge in lieu of trial by court-martial.

e. Orders 201-150, dated 16 October 1980 shows the applicant was reassigned to the U.S. Army Separation Transfer Point for separation processing, with a reporting date of 15 October 1980.

f. In a memorandum subject: Exclusion from United States Military Reservation, dated 17 October 1980, shows he was prohibited from ever entering or reentering the limits of Fort Bragg (Fort Liberty).

g. His DD Form 214 for the period ending 17 October 1980, shows he was discharged with an UOTHC discharge, pursuant to Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, Administrative Discharge, Conduct Triable by Court-Martial. He received a separation code of "JFS" and reentry codes of "3" and "3B". He completed 9 months, and 5 days of active service. His grade at the time of discharge was private E-1. He had lost time from 3 September 1980 to 4 September 1980 and from 3 October 1980 to 9 October 1980.

h. In a memorandum subject: Request for issuance of DD Form 215, dated 17 October 1980, shows the following corrections were requested as it pertains to the applicant:

- item 12c: from 00 09 05 to 00 09 03
- item 29: add 80 10 16 to 80 10 17

**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 going AWOL on multiple occasions. The Board noted, the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination.

2. The Board agreed the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 9 months, and 5 days of net service for this period. 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 to a honorable discharge. Therefore, the Board 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 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.

[REDACTED]

[REDACTED]

[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. Title 10, U.S. Code, 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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.
  - 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 a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at

expiration of their period of enlistment, MSO, or period for which called or ordered to active duty.

c. Chapter 10 of that regulation provided, in pertinent part, 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, an under other than honorable conditions discharge was normally considered appropriate.

3. Army Regulation 635-5 (Personnel Separations - Separation Documents). The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service.

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard.

a. Table 3-1 provides a list of RE codes:

- RE code "1" applies to personnel who have completed their obligated term of active service and are considered qualified to reenter the U.S. Army if all other criteria are met
- RE code "2" Applies to persons not eligible for immediate reenlistment
- RE code "3" applies to personnel who are not considered fully qualified for reentry or continuous service at time of separation, but whose disqualification is waivable. They are ineligible unless a waiver is granted
- RE code "4" applies to personnel separated from last period of active-duty service with a nonwaivable disqualification

b. Table 3-6 provides RE code "3B" applies to personnel who have lost time during their last period of service. They are ineligible for enlistment unless a waiver is granted.

5. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "JFS" is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 10. RE code of "3" is the appropriate corresponding RE code for SPD code "JFS".

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.
7. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.
8. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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.
9. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//