

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 September 2024

DOCKET NUMBER: AR20230014929

APPLICANT REQUESTS: An upgrade of his under other than honorable conditions (UOTHC) characterization of service to general or 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 has been out of the military since 1983. He has done nothing to disgrace his country, he has been on good behavior since receiving his discharge.
3. Prior to the period of service under review the applicant completed honorable active service from 23 June 1976 to 27 November 1978. He was also promoted to sergeant (SGT)/pay grade E-5, on 27 November 1978, which was the highest rank he achieved. He was issued a DD Form 214 for this period of service that is not contained in the available evidence.
4. On 28 November 1978, the applicant reenlisted in the Regular Army. He held military occupational specialty (MOS) 12B (Combat Engineer). He was assigned to Germany at the time of enlistment with duties in his MOS.
5. The applicant accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), on the following dates:
 - a. On 28 January 1981, for being absent from his appointed place of duty at the time prescribed (The Primary Noncommissioned Officers Course/Combat Arms, Fort

Sill, OK), from 12 to 13 January 1981. His punishment consisted of reduction from SGT/E-5 to specialist four/E-4 (suspended), and 30 days of restriction and extra duty.

b. On 6 August 1982, for wrongfully using reproachful language [profanity] toward a specialist four. His punishment included reduction to specialist four and a forfeiture of \$200 pay for 2 months.

c. On 4 April 1983, for being derelict in the performance of his duties as a Soldier in a training status in that he willfully failed to stay in the prescribed uniform by appearing off post in civilian clothes, on 3 March 1983.

6. The available record is missing some of the facts and circumstances surrounding his separation processing to include his charge sheet. However, the available evidence includes:

a. The applicant's request for discharge for the good of the service, under the provisions of chapter 10, Army Regulation (AR) 635-200, in lieu of trial by court-martial. In his request he acknowledged:

(1) Consulting with counsel.

(2) He was charged with violating the UCMJ, Article 134, by wrongfully distributing 2.01 grams of marijuana in the hashish form, on or about 2 April 1983.

(3) He was making the request of his own free will, without coercion from anyone and that he was aware of the implications attached to his request. He also admitted that he was guilty of the charges against him, under no circumstances did he desire further rehabilitation, nor did he desire to perform further military service.

(4) He understood he could receive an UOTHC discharge and that he might be deprived of all benefits as a result of such a discharge.

(5) He understood that there was no automatic upgrade nor review by any government agency of a less than honorable discharge and that he must apply to the Army Discharge Review Board (ADRB) or the ABCMR, if he wished a review of his discharge. He acknowledged he realized the act of consideration by either board did not imply that his discharge would be upgraded.

(6) He was declining to submit statements in his own behalf.

b. The Staff Judge Advocate's (SJA) review for legal sufficiency showing, on 4 October 1983, the applicant's immediate and intermediate commanders recommended separation with an UOTHC discharge. The SJA recommended approval with the issuance of an UOTHC discharge.

c. Orders 297-229 from the United States (US) Army Regional Personnel Center, Wuerzburg, Germany reassigning the applicant to U.S. Army Separation Transfer Point for separation processing with a discharge date of 2 November 1983.

d. On 31 October 1983, the US Army Regional Personnel Center, Wuerzburg, Germany issued an indorsement to Orders 297-229, changing his effective discharge date to 31 October 1983.

7. Accordingly, on 31 October 1983, he was discharged in pay grade E-1. The DD Form 214 he was issued shows he completed 4 years, 11 months, and 3 days of net active service this period. He also completed 2 years, 5 months, and 5 days of total prior active service. His awards are listed as the Army Service Ribbon, Overseas Service Ribbon, Humanitarian Service Medal, and Marksman Marksmanship Qualification Badge (M-16) Rifle. His DD Form 214 also shows in:

- Character of Service, "Under Other Than Honorable Conditions"
- Separation Authority "Chapter 10, AR 635-200"
- Narrative Reason for Separation, "For the Good of the Service In-Lieu of Court-Martial"
- Separation Code KFS and Reenlistment Codes 3/3B

8. AR 635-200 states a chapter 10 is a voluntary discharge request in-lieu of trial by court martial. In doing so, he would have waived his opportunity to appear before a court-martial and risk a felony conviction. An UOTHC discharge is authorized and normally considered appropriate; however, a member may be awarded an honorable or general discharge, if during the current enlistment period of obligated service, he has been awarded a personal decoration or if warranted by the particular circumstances of a specific case.

9. The applicant was discharged for acknowledging he wrongfully distributed 2.01 grams of marijuana in the hashish form.

10. Clemency guidance to the Boards for Correction of Military/Navy Records (BCM/NR) does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority to ensure each case will be assessed on its own merits. In determining whether to grant relief BCM/NRs 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. This includes consideration of changes in policy, whereby a service member under the same circumstances today would reasonably be expected to receive a more favorable outcome.

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 counsel's statement, 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 determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of wrongfully distributing 2.01 grams of marijuana. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board carefully considered the applicant years of service and awards and decorations.

2. However, the Board agreed the applicant length of service did not misconduct his actions of drug distribution. The Board noted, 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 general under honorable conditions discharge or honorable. 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.



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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), sets 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, an UOTHC discharge is normally considered appropriate.
 - b. 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. 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 DRBs and BCM/NRs 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, BCM/NRs 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//