

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 August 2024

DOCKET NUMBER: AR20230015118

APPLICANT REQUESTS: reconsideration of his previous request to upgrade 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)
- DD Form 214 (Report of Separation from Active Duty)

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 AR20100028080 on 21 June 2011.
2. The applicant states he was an outstanding member, and promoted quickly. He was up for promotion to sergeant with only 15 months' time in service. The first sergeant tossed his promotion paperwork in the trash can. He was young and got angry, he did not care anymore. He messed up. He was a good Soldier. During the separation process, he was told he would be given a general discharge.
3. On 27 November 1974, the applicant enlisted in the Regular Army.
4. On 24 February 1975, the applicant received nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ), for stealing a box of candy from the post exchange, on or about 23 February 1975. His punishment included forfeiture of \$50.00 for one month, restriction, and extra duty for ten days.
5. On 25 February 1976, the applicant was laterally appointed to corporal/E-4.
6. On 5 October 1976, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 1 November 1976.

7. On 5 November 1976, the applicant was reported as AWOL a second time, and remained absent until his apprehension by civil authorities on 21 December 1976. He was returned to military authorities on 28 December 1976.
8. On 14 February 1977, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
9. On 14 February 1977, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.
10. Court-martial charges were preferred against the applicant for violations of the UCMJ; however, the relevant DD Form 458 (Charge Sheet) is not available for review.
11. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.
12. The applicant was discharged accordingly on 4 April 1977. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Program Designator code JFS and Reenlistment code 3. He completed 2 years, 1 month, and 18 days of active service.
13. The applicant petitioned the ABCMR requesting a discharge upgrade. On 21 June 2011, the Board voted to deny relief and determined that the overall merits of the case were insufficient as a basis for correction of the applicant's records.
14. 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 Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.
15. 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:

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 Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with an offense punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's contention he was an outstanding servicemember, promoted quickly, and recognizes that he messed up; however, found no basis for consideration of an upgrade such as post-service achievements, letters of support and/or recommendation, or other evidence to suggest a discharge upgrade is warranted. Based on the limited information provided by the applicant, the Board was unable to grant 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.

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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 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.
2. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - 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.
 - 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. 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.

//NOTHING FOLLOWS//