

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 August 2024

DOCKET NUMBER: AR20240000225

APPLICANT REQUESTS: an 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)
- 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 he requests upgrade of his discharge for a health reason.
3. The applicant enlisted in the Regular Army 22 August 1973.
4. The applicant served in the Republic of Korea from 13 February 1974 through 3 December 1974.
5. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on:
 - 4 March 1974, for wrongfully having in his possession a false Military Identification Card on or about 4 March 1974; his punishment consisted of forfeiture of \$76.00 pay for one month and reduction to private/E-1
 - 21 May 1974, for being drunk and disorderly on or about 18 May 1974; his punishment consisted of forfeiture \$76.00 pay for one month and restriction
 - 8 August 1974, for failing to go at the time prescribed to his appointed place of duty on or about 27 July 1974; and for absenting himself from his unit on or about 2 August 1974 until on or about 6 August 1974; his punishment consisted of forfeiture of \$25.00 pay and restriction

6. The applicant was reported as absent without leave (AWOL) on 2 October 1974, he was subsequently dropped from the rolls.

7. The applicant was apprehended by military authorities on 3 December 1974.

8. The applicant accepted NJP under Article 15 of the UCMJ on 13 December 1974, for AWOL on or about 2 October 1974 until 3 December 1974. His punishment consisted of forfeiture of \$110.00 per month for two months.

9. Court martial charges were preferred against the applicant for violations of the UCMJ on 20 March 1975. His DD Form 458 (Charge sheet) shows he was charged with AWOL from on or about 30 December 1974 until 19 March 1975.

10. His Report of Mental Status Evaluation, dated 25 March 1975, shows the applicant did not have significant mental illness, was mentally responsible, able to distinguish right from wrong, able to adhere to the right, had the mental capacity to understand and participate in board proceedings and met retention standards.

11. The applicant consulted with legal counsel on 15 March 1975 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 provisions 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 to submit statements in his own behalf. He stated he cannot adjust to the military. He has so many problems on his mind. He hoped the commander understood he tried so hard, but it is not the life for him.

12. The applicant's immediate commander recommended approval of his request for discharge. The commander noted the applicant was aware of the nature of the consequences of an undesirable discharge; however, he desired elimination from the service under the provisions of AR 635-200, Chapter 10.

13. The applicant's commander recommended approval and stated that the applicant volunteered for duty in Korea in 1973. The applicant stated that he had family problems

at home, in that his parents were dead, and his younger brother (age 15) is in trouble with the police. The applicant is convinced he is needed at home and will continue to go AWOL if returned to duty.

14. The separation authority approved the applicant's request for discharge for the good of the service on 16 June 1975 and directed an undesirable discharge certificate be issued. The applicant's character of service resulted from his demonstrated misconduct and his failure to expend reasonable effort in his own behalf. The charges which form the basis for this action will be dismissed effective the date of his discharge.

15. The applicant was discharged on 21 July 1975. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 10, for the good of the service - in lieu of trial by court-martial with Separation Program Designator Code KFS and Reenlistment Code 3. His service was characterized as UOTHC. He completed 1 year, 6 months, and 9 days of active service. He had 141 days of lost time. He was awarded or authorized the National Defense Service Medal and the Armed Forces Expeditionary Medal.

16. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

17. On 13 August 1980, the Army Discharge Review Board (ADRB) determined the applicant was properly discharged and denied his request for a change in the type and nature of his discharge.

18. 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 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 being absent without leave from 30 December 1974 to 19 March 1975, 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 of a health reason; however, found no evidence to support such an assertion. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust and 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.

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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, 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//