

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 August 2024

DOCKET NUMBER: AR20240000294

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to under honorable conditions (general).

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

- DD Form 293 (Application for the Review or Discharge from the Armed Forces of the United States), 23 September 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 9 February 1984

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, in effect, he is requesting an upgrade of his characterization of service to help him obtain medical benefits.
3. The applicant enlisted in the Regular Army on 11 June 1980, for a 3-year period. He was awarded the military occupational specialty of 13B (Cannon Crewman) and the highest rank he attained was specialist four/E-4.
4. On 6 August 1982, the applicant accepted nonjudicial punishment under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for failing to go to his appointed place of duty on or about June 1982. The Continuation Sheet is not available for review within the record. His punishment imposed was reduction to E-3 and 14 days extra duty.
5. Court-martial charges were preferred against the applicant on 6 January 1984, for violations of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows he was charged with four specifications of absenting himself without leave (AWOL) from on or about:

- 14 August 1982 until on or about 22 August 1982
- 10 September 1982 until on or about 10 October 1982
- 1 November 1982 until on or about 29 November 1983
- 3 January 1984 until on or about 5 January 1984

6. The applicant consulted with legal counsel on 6 January 1984, and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he understood he may encounter substantial prejudice in civilian life and elected not to submit statements in his own behalf.

7. On 16 January 1983[sic], the applicant's immediate commander recommended approval of his request for separation and further recommended issuance of an UOTHC discharge. Additionally adding, the applicant was charged with four periods of AWOL totaling 433 days.

8. The separation authority approved the applicant's request for discharge for the good of the service on 27 January 1984, and further directed the applicant receive a UOTHC discharge, and that he be reduced to the lowest enlisted grade of E-1.

9. The applicant's DD Form 214 shows he was discharged on 9 February 1984, under the provisions of AR 635-200, Chapter 10, for the good of the service – in lieu of court-martial, in the grade of E-1. He received an UOTHC characterization of service, a separation code of KFS, and reenlistment code of RE-3B. He was credited with 2 years, 5 months, and 14 days of net active service with four periods of time lost totaling 433 days. His awards included the Army Service Ribbon and the Overseas Service Ribbon.

10. Discharges under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service from the Soldier to avoid a trial by court-martial. An UOTHC character of service is normally considered proper.

11. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

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 record, and published DoD guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant was charged with commission of offenses (four counts of AWOL) 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 was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

8/8/2024

X

CHAIRPERSON

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. AR 635-200, in effect at the time, provided guidance for the administrative separation of enlisted personnel:
 - a. Chapter 10 of this regulation provided a member who has committed an offense or offenses, the punishment for which, under the UCMJ and the Manual for Courts-

Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the Service. The discharge request may be submitted after court-martial charges are preferred against the member, or, until final action on the case by the court-martial convening authority. A member who is under a suspended sentence of a punitive discharge may also submit a request for discharge for the good of the Service. An UOTHC discharge certificate normally is appropriate for a member who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member 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 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.

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//