

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 September 2024

DOCKET NUMBER: AR20240000683

APPLICANT REQUESTS: in effect, an upgrade of his discharge under other than honorable conditions (UOTHC).

APPLICANT'S SUPPORTING DOCUMENT CONSIDERED BY THE BOARD:

DD Form 149 (Application for Correction of Military Record)

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 initially enlisted for a period of 6 years for training in military occupational specialty (MOS) 67T (Black Hawk Crew Chief). While attending Basic Combat Training (BCT), he was informed that MOS 67T was no longer available and he needed to change his MOS. The new MOS he chose only had a 4 year service obligation. During his fourth year of service, he was assigned to a unit that did not have any positions coded for his new MOS, so he was left doing "Detail Work" every day. When he checked on his expiration term of service (ETS) date he learned his service obligation was never changed from 6 years to 4 years when his MOS was changed. He tried several ways to either be reassigned or allowed to work in a different unit during the day. He went all the way up to the Division Command and was denied any assistance. He grew frustrated with the Army and went absent without leave (AWOL) for 30 days; then he requested a voluntary discharge. Prior to these events, he served well and had many outstanding achievements: Soldier of the month, Gold Schutzenschnur Medal (German Marksmanship Medal), scored the maximum for the Army Physical Fitness Test, and served as the commander's driver. He is pursuing a college education and would like to use his education benefits, but his discharge is preventing him from doing so.
3. On 19 September 1996, the applicant enlisted in the Regular Army in the rank/grade of private (PV2)/E-2 for a period of 6 years.

4. U.S. Army Engineer Center and Fort Leonard Wood, Fort Leonard Wood, MO memorandum, Subject: Erroneous, Defective, or Unfulfilled Enlistment Commitment, dated 20 November 1996 shows the applicant was advised that his latest enlistment was breeched by the Department of the Army for his enlistment in MOS 67T.

a. The applicant was afforded an opportunity to choose one of three options available to him:

(1) To waive his enlistment commitment, select an alternate option for which he qualified and complete the term of service for which he enlisted. Understanding that upon completion of training he would be assigned in accordance with the needs of the service.

(2) To waive his enlistment choice of assignment, to select an alternate assignment from among options provided by the Personnel Service Management and Department of the Army, and to continue his enlistment.

(3) To be separated from the service. Understanding that if he was currently serving on his initial enlistment, he was eligible for immediate separation and would be discharged as soon as possible.

b. The applicant acknowledged he read and fully understood the options available to him and elected option a. (1) above. If retained, he desired to be trained in MOS 45G (Fire Control Repairer).

5. The applicant's DA Form 2-1 (Personnel Qualification Record (Part II)) shows he completed training for MOS 45G and was subsequently assigned to a unit in Germany. He was advanced to the rank/grade of specialist (SPC)/E-4 on 1 August 1998, the highest rank he held while serving.

6. A DA Form 4980-18 (Army Achievement Medal (AAM) Certificate) shows the applicant was awarded the AAM for exceptional meritorious achievement from 1 October 1997 to 1 November 1999 by Permanent Orders Number 054-01 issued by the 299th Forward Support Battalion, Schweinfurt, Germany, dated 23 February 1999.

7. The applicant's duty status was changed as follows on the dates shown:

- from Present for Duty (PDY) to AWOL on 7 February 2000
- from AWOL to Dropped from Rolls (DFR) on 8 March 2000
- from DFR to Attached/Returned to Military Control on 17 April 2000

8. A DD Form 458 (Charge Sheet) shows court-martial charges were preferred against the applicant on 19 April 2000 for his violation of the Uniform Code of Military Justice

(UCMJ) by, on or about 7 February 2000, without authority, absenting himself from his unit and remaining so absent until on or about 17 April 2000. His immediate commander recommended a trial by Special Court-Martial empowered to adjudge a Bad Conduct Discharge.

9. On 21 April 2000, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, in lieu of trial by court-martial. He consulted with legal counsel and was advised of the basis for the trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him. He elected not to submit statements in his own behalf.

10. The applicant's immediate commander recommended approval of his request for discharge with his service characterized as UOTHC.

11. On 4 October 2000, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He directed his service be characterized as UOTHC, and further directed that the applicant be reduced to the lowest enlisted grade.

12. The applicant was reduced from SPC/E-4 to Private/E-1 on 4 October 2000.

13. Orders and the applicant's DD Form 214 show he was discharged on 25 October 2000, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "In Lieu of Trial By Court-Martial." He was credited with completion of 3 years, 10 months, and 27 days of net active service this period. He had time lost due to AWOL from 7 February 2000 until 16 April 2000. He did not complete his first full term of service.

14. Army Regulation 635-200, Chapter 10, provides for 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. A characterization of UOTHC is authorized and normally considered appropriate.

15. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement (circumstances regarding the period of AWOL), his record of service, the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. The Board found insufficient

evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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.



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 three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body.

3. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

4. 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 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//