

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 October 2024

DOCKET NUMBER: AR20240001063

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions characterization of service.

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

- DD Form 149 (Application for Correction of Military Record), 7 December 2023
- self-authored statement
- character reference statement, from S.C.
- character reference statement, from V.D.R.
- character reference statement, from L.T.
- character reference statement, from O.R.

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 loved being a Soldier and his life while serving in the Army. He feels his service was honorable, even though he had made one mistake. He believes he never got a second chance to correct his wrong and was discriminated against for missing one formation. He wants to be recognized as an honorable veteran.

a. When he missed his dental appointment, he was shamed by his Sergeant and when he went home on a weekend, he came back to being in trouble by his Sergeant. Due to these feelings of being ashamed he decided to go absent without leave. He knows he was not in his right mind and his decision to leave was going to end his career.

b. He was lost and ruined his life. He relied on God and when he came back requested to be discharged. He is wanting to correct some of his mistakes made during his career and is sorry for those mistakes he made. He is requesting a second chance and thanks the Board for their time and consideration.

3. The applicant enlisted in the Regular Army on 2 August 1978, for a 4-year period. He was awarded the military occupational specialty of 13B (Cannon Crewman). The highest rank he attained was private first class/E-3.
4. On 13 November 1979, the applicant accepted non-judicial punishment (NJP), under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for failing to go to his prescribed appointed place of duty, the Dental Clinic, on or about 2 November 1979. His punishment imposed was forfeiture of \$50.00 and extra duty for seven days.
5. He accepted NJP, under the provisions of Article 15, of the UCMJ on 7 April 1980, for going absent without leave (AWOL) on or about 19 February 1980 and remaining AWOL until on or about 13 March 1980. His punishment imposed was reduction to the grade of E-2 and 25 days of confinement.
6. Court-martial charges were preferred against the applicant for violation of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows the applicant was charged with being AWOL from on or about 8 April 1980 until on or about 10 January 1986. The relevant DA Form 4187 (Personnel Action) states the applicant was apprehended by civilian authorities and returned to military control on 10 January 1986.
7. The applicant admitted to going AWOL from 8 April 1980 and remaining AWOL until 10 January 1986. He consulted with legal counsel on 17 January 1986, 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 under other than honorable conditions (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 elected not to submit a statement in his own behalf and understood he may encounter substantial prejudice in civilian life.

8. On 21 January 1986, the applicant's immediate and intermediate commander's recommended approval of the requested discharge and further recommended the applicant be separated with a UOTHC characterization of service.

9. The separation authority approved the applicant's request for discharge for the good of the service on 28 January 1986. He further directed the applicant be reduced to the lowest enlisted grade and furnished an UOTHC discharge.

10. The applicant was discharged on 25 February 1986, 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. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his character of service was UOTHC, with separation code KFS and reenlistment code RE-3B and 3. He was credited with completion of 1 year, 8 months, and 28 days of net active service, with lost time from 19 February 1980 to 12 March 1980 and from 8 April 1980 to 9 January 1986. His awards include the Army Service Ribbon.

11. The applicant additionally provides four-character reference statements, which characterize the applicant as a hard worker with great character, trustworthy, dependable, honest, courteous, sensible, graceful, and an honorable person. He was someone who was excited to serve in the Army until he became depressed in his life with his marriage ending. After his discharge went to rehab and now endures many illnesses and pain in his life. He went from strong and happy to a man who is now weak, in pain, and depressed.

12. Administrative separations under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial. An UOTHC character of service is normally considered appropriate.

13. 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 records, and published DoD guidance for liberal consideration of discharge upgrade requests. The applicant's separation packet is not available for review. However, other evidence shows the applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he presumably 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 the applicant's available separation processing. The Board also considered the applicant's character reference statements in support of a clemency determination. The authors characterize the applicant as a hard worker with great character, trustworthy, dependable, honest, courteous, sensible, graceful, and an honorable person. However, the Board noted that the letters provided did not outweigh the misconduct for which he was discharged particularly because he had no intention of returning from AWOL, given that he was apprehended by civilian authorities and returned to military control on 10 January 1986. Therefore, 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:

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, 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 635-200 (Personnel Separations - Enlisted Personnel), 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 Uniform Code of Military Justice 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 under other than honorable conditions 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.

d. An under other than honorable conditions discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and the good of the service.

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//