

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 September 2024

DOCKET NUMBER: AR20240001135

APPLICANT REQUESTS: Reconsideration of his previous request for 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 293 (Application for the Review of Discharge)
- self-authored statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- character reference letters (two)

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 AR2002068103 on 20 June 2002.

2. The applicant states he joined the military to get away from matters in his personal life. While serving in the Army, he got into trouble and tried to learn from his mistakes. He took leave and returned home where he began helping his father and other farmers in the community. Unfortunately, he ignored his responsibilities and did not return to the Army. Following his separation from the Army, he became a member of his local church, held several community jobs, and served in the Salvation Army. He is married and has two grandchildren. He loves his country and prays often for it. He shamefully regrets how he was discharged; he wishes he could go back and do it over.

3. On 22 November 1978, the applicant enlisted in the Regular Army for 4 years. Upon completion of initial entry training, he was awarded military occupational specialty 13B (Cannon Crewman).

4. On 15 July 1979, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military control on 14 January 1981.

5. On 23 January 1981, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

6. Court-martial charges were preferred against the applicant on 27 January 1981, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL from on or about 15 July 1979 through on or about 14 January 1981.

7. On 28 January 1981, the applicant consulted with legal counsel 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 bad conduct discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. 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.

b. He submitted a statement in his own behalf stating he went AWOL because his father became ill after his enlistment in the Army. He felt it would be the best for his family if he could go home and help on the farm.

8. On 28 April 1981, the applicant's commander recommended approval of his request for discharge, and further recommended the issuance of an UOTHC discharge. The commander noted that punishment could be expected to have a minimal rehabilitative effect on the applicant. He believed a discharge at that time to be in the best interest of all concerned.

9. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 4 May 1981, and directed his reduction to the lowest enlisted grade with issuance of an UOTHC discharge certificate.

10. The applicant was discharged on 22 May 1981. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10 for administrative discharge conduct triable by court-martial. He was discharged in the

lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Code JFS and Reentry Codes 3, 3B. He completed 1 year and 2 days of net active service this period with 549 days of lost time.

11. The applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 20 June 2002, the Board voted to deny relief and determined the applicant had failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice.

12. The applicant provides two character reference letters that collectively attest to the applicant's faith, compassion, moral character, and the support he provides others in his community. These letters are provided in their entirety for the Board's review within the supporting documents.

13. 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.

14. 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:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, 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 found the character reference letters the applicant provided insufficient to support clemency. 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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR2002068103 on 20 June 2002.

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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 (Personnel Separations – Enlisted Personnel) 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//