

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 October 2024

DOCKET NUMBER: AR20240002422

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

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 to consider his time spent in the military.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army 22 April 1986.
 - b. On 27 March 1997, he was honorably discharged from active duty. His DD Form 214 shows he completed 10 years, 11 months, and 6 days of active service. He was assigned separation code KGM and the narrative reason for separation listed as "Accept Commission or Warrant in the Army," with reentry codes 1. It also shows he was awarded or authorized:
 - Army Commendation Medal with 1 oak leaf cluster
 - Army Achievement Medal with 1 oak leaf cluster
 - Good Conduct Medal (2nd award)
 - National Defense Service Medal
 - Armed Forces Expeditionary Medal
 - Noncommissioned Officer Professional Development Ribbon with Numeral 2
 - Army Service Ribbon
 - Overseas Service Ribbon (2 award)

- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Parachutist Badge

c. A DA Form 71 (Oath of Office – Military Personnel) dated 28 March 1997 shows, the applicant was appointed as warrant officer one (WO-1).

d. A DD Form 458 (Charge Sheet) shows charges were preferred on the applicant on 20 March 1998 for one specification on or about 1 December 1997, commit an indecent assault upon Mrs. A. S. B. a person not his wife by digitally penetrating A. S. B. vagina and by rubbing his genitals on A. S. B. causing him to ejaculate, in the presence of a child under the age of five, with intent to gratify his sexual desires.

e. On 24 April 1998, the applicant consulted with legal counsel and voluntarily tendered his resignation from the Army for the good of the service under the provisions of chapter 3, AR 600-8-24 (Officer Transfer and Discharges) in lieu of trial by court-martial or a board of officers. He acknowledged:

- he was afforded an opportunity to consult with counsel
- he was afforded an opportunity to present matters
- if his request for resignation was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate

f. On 24 April 1998, the immediate commander recommended the approval of the applicant's request of resignation and the applicant to be issued a General Under Honorable Conditions Discharge Certificate.

g. On 24 April 1998, the chain of command recommended the approval of the applicant's request of resignation and the applicant to be issued an Other Than Under Honorable Conditions Discharge Certificate.

h. On 6 May 1998, the separation authority approved the applicant's request for discharge for the good of the service – in Lieu of General Court-Martial. He would be issued an under other than honorable conditions discharge.

i. A DA Form 2627 (Record of Proceedings Under Article 15, UCMJ) dated 26 June 1998 shows, he accepted nonjudicial punishment for on or about 12 March 1998, with intent to deceive, sign an official record, to wit: DD Form 1842, which record was false in that the amount of the claim was overinflated, and was then known by the applicant to be so false.

- on or about 12 March 1998, by preparing DD Forms 1842 and 1844, for presentation for approval or payment, make a claim against the United States

in the amount of \$3,286.70 for private property alleged to have been stolen in the military service, which claim was false in the amount of \$1,000.00 and was then known by the applicant to be false.

- In that the applicant, for the purpose of obtaining the approval, allowance and payment of a claim against the United States in the amount of \$3,286.70, did, at Fort Polk, LA, on or about 12 Mar 98, make and use a certain paper, to wit: a sales receipt dated 14 Feb 96, which said paper, as the applicant, then knew, contained a statement that he purchased a set of four rims for \$2,080.00, which statement was false and fraudulent in that he paid only \$1,080.00 for the set of four rims and which he altered to reflect a \$2,080.00 purchase price by changing the one (1) to a two (2), and was then known by the applicant to be false and fraudulent.
- Item 8 (I have considered the appeal and it is my opinion that): With the exception of the last charge (Article 133), the proceedings were conducted in accordance with law and regulation. The punishment is appropriate.
- Item 9 (After consideration of all matters presented in appeal, the appeal is): The last charge (Article 133) is set aside. The adjudged punishment shall remain the same. No other relief is granted.

j. On 16 July 1998, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 3 months, and 9 days of active service. He was assigned separation code DFS and the narrative reason for separation listed as "In Lieu of Court Martial." It also shows he was awarded or authorized:

- Army Commendation Medal with 1 oak leaf cluster
- Army Achievement Medal with 1 oak leaf cluster
- Good Conduct Medal (2nd award)
- National Defense Service Medal
- Armed Forces Expeditionary Medal
- Noncommissioned Officer Professional Development Ribbon with Numeral 2
- Army Service Ribbon
- Overseas Service Ribbon (2 award)
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Parachutist Badge

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. By regulation (AR 600-8-24), officer may submit a resignation for the good of the Service (RFGOS) in lieu of GCM under the following circumstances (cannot submit unqualified resignation), Court-martial charges have been preferred against the officer with a view toward trial by GCM. An officer separated under this paragraph normally receives characterization of service of Under Other Than Honorable Conditions. An officer who resigns for the good of the Service (regardless of the character of service received) is barred from rights under laws administrated by the Veterans Affairs based on the period of service from which the officer resigned. Exceptions are War Risk, United States Government (converted), National Service Life Insurance, or Servicemember's Group Life Insurance (38 USC 1965).
6. By regulation (AR 635-5), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).
7. In reaching its determination, the Board can consider the applicant's petition and his 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 indecent assault by digitally penetration in the presence of a child under the age of five, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested resignation for the good of the service in lieu of trial by general court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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.

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 635-5 (Separation Documents, in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.
3. Army Regulation 600-8-24 (Officer Transfer and Discharges) in effect at the time, When an officer's tour of Active Duty is terminated due to discharge, retirement, or REFRA, the period of service will be characterized as " Honorable," "General" ("Under Honorable Conditions"), "Under Other Than Honorable," or "Dishonorable" (warrant officers who do not hold a commission only), depending on the circumstances. The character of service will be predicated on the officer's behavior and performance while a member of the Army. Characterization normally will be based on a pattern of behavior and duty performance rather than an isolated incident. However, there are circumstances in which conduct reflected by a single incident may provide the basis of characterization of service.
 - a. "Resignation for Good of the Service" of this regulation states an officer whose conduct has rendered him triable court-martial, for an offense punishable by dismissal; may submit a resignation; for the good of the service in lieu of trial. An officer who is under a suspended sentence of dismissal may likewise submit a resignation for the good of the service.
 - b. Paragraph 1-22a, states Honorable characterization of service (HD). An officer will normally receive an Honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance under DODD 5200.2-R and AR 380-67 for reasons that do not involve acts of misconduct, for an officer. Department of Defense (DD) Form 256A (Honorable Discharge Certificate) will be furnished to a discharged officer; however, a certificate is not issued when an officer is released from AD. When the separation is based solely on preservice activities, substandard performance of duty, or final revocation of a security clearance under DODD 5200.2-R and AR 380-67 for reasons that do not involve acts of misconduct, it will be Honorable.

c. Paragraph 1-22b, states General Under Honorable Conditions characterization of service (GD). An officer will normally receive an Under Honorable Conditions characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an Honorable discharge.

d. Paragraph 1-22b, states Under Other Than Honorable Conditions characterization of service (OTH). A discharge Under Other Than Honorable Conditions is an administrative separation from the service under conditions other than honorable. A discharge certificate will not be issued. An officer will normally receive an "Under Other Than Honorable Conditions" when they - Resign for the good of the service.

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 (BCM/NRs) 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 based on 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//