

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 November 2024

DOCKET NUMBER: AR20240003549

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

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)
- State Retirement Agency letter
- Retirement Allowance
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Governor's Citation
- Self-authored letter

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 upgrade his reason for separation to be eligible for certificate of eligibility for Veterans Affairs mortgage loan. In a self-authored letter, he states please consider the following circumstances in the re-evaluation of his "reason for separation." He graduated from basic training in October 1979 and then completed Advanced Individual Training school in Fort Lee, VA to become a 76D Specialist – (Supply Clerk) in December 1979. Then he was deployed to Germany where he served until approximately May 1980. At that time, he had 2 weeks of leave which he used to visit his mother in the U.S. who was gravely ill at the time. Once he was home, it was apparent that he could not return to base. His mother needed his care, and he was her only child so he made the decision as a 19 year old kid to stay and care for her.
 - a. As a result, the military considered him absent without leave (AWOL) and he was eventually picked up, sent to Fort Dix and asked if he wanted to stay in the military or be discharged. He had no choice at the time but to request a discharge due to his mother's

condition. At no time did he break any laws or get into any trouble. Instead, he stayed with his mom to care for her and found work to earn money to contribute to her bills.

b. In 1983 he started work at the State of █. He worked in several departments over his 39 1/2-year career there, including the Department of Health and Mental Hygiene, now called the Department of Juvenile Services. He here he stayed until he retired on 1 November 2022. During his tenure there, he rose to the level of Community Detention Officer III/Court Officer and was awarded the Governor's Citation for his service at the State from both his department and the State of █. The state of █ also awarded him a service credit adjustment to his retirement pay for time served in the military.

c. He is asking that his "reason of separation" be upgraded to "honorable" so that he is eligible for a Certificate of Eligibility to purchase a home using a VA mortgage due to his service in the Army from 26 July 1979 to 10 September 1982.

3. The applicant enlisted in the Regular Army on 26 July 1979.
4. DA Form 4187 (Personnel Action) shows his duty status was changed from present for duty (PDY) to AWOL on 6 April 1980. His duty status was then changed from AWOL to dropped from the rolls (DFR) on 6 May 1980. His duty status was finally changed from DFR to PDY after he was apprehended on 18 August 1982, by military authorities at Fort Meade, MD.
5. DD Form 458 (Charge Sheet) shows court-martial charges were preferred on 19 August 1982, for the charge of AWOL and its specification of being AWOL from on or about 6 April 1980 and remaining so absent until on or about 18 August 1982.
6. On 20 August 1982, after consultation with counsel voluntarily requested discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. He understood that he may request discharge for the good of the service because of the charge preferred against him under the Uniform Code of Military Justice, which authorizes the imposition of a bad conduct discharge or dishonorable discharge. He also understood:

- He may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Discharge Certificate
- He may be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered by the Veterans Administration
- He may be deprived of his rights and benefits as a veteran under both Federal and State law
- He may expect to encounter substantial prejudice in civilian life because of an under other than honorable discharge

7. His chain of command recommended approval of separation under the provisions of AR 635-200, chapter 10, and that he receive an Other Than Honorable Conditions Discharge Certificate be issued.

8. On 30 August 1982, the separation authority approved discharge under the provisions of AR 635-200, chapter 10. He directed a Discharge Certificate Under Other Than Honorable Conditions be issued, and member be reduced to the lowest grade.

9. Accordingly, he was discharged on 10 September 1982, under conditions other than honorable under the provisions of AR 635-200, chapter 10. His DD Form 214 shows he completed 9 months and 3 days net active service this period. It also shows:

- Item 26 (Separation Code): JFS
- Item 27 (Reenlistment Code): RE-3, #b
- Item 28 (Narrative Reason for Separation): Admin Discharge Conduct Triable by Court Martial
- Item 29 (Dates of Time Lost During this Period): 800406 to 820817 (6 April 1980 – 17 August 1982)

10. The applicant provides:

- a. State Retirement Agency letter showing he was issued nine months service credit.
- b. Retirement Allowance showing what his retirement allowance is.
- c. Governor's Citation for his demonstrated high integrity and ability, meriting the great trust and respect. In appreciation of his outstanding services to the citizens of the state of [REDACTED].

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

12. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

13. 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 an offense punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. Based on a preponderance of the evidence, 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

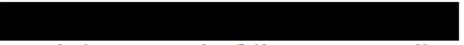
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
			DENY APPLICATION

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.

6/10/2025



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. Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.
 - a. Paragraph 3-7a (1) states an honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.
 - b. Paragraph 3-7b (1) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.
3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and 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. 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. 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//