

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 October 2024

DOCKET NUMBER: AR20240003844

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general).

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

DD Form 293 (Application for the Review of Discharge)

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 watched his mother die. Her passing changed his life forever. Life was rough for him; he was getting into trouble. He was recently married with a newborn child; he joined the Army to take care of his family. His wife changed her mind and decided not to relocate with him. Without his family co-located, he began to rebel so he could go home to his family. Without any empathy, his first sergeant told him that he was going to send him back to the neighborhood he came from. He never got a chance to talk to anyone about how he was feeling or why. He hopes an upgrade to his characterization of service will help him be a better grandparent.
3. The applicant enlisted in the Regular Army on 8 October 1997. The highest grade he attained was E-2.
4. On 9 July 1998, the applicant was reported absent without leave (AWOL) and remained absent until he returned to military authorities on 3 November 1998.
5. On 23 January 1999, the applicant was reported AWOL a second time, and remained absent until he returned to military authorities on 25 January 1999.
6. On 27 January 1999, the applicant was reported AWOL a third time, and remained absent until he surrendered to military authorities on 24 May 1999.

7. Court-martial charges were preferred against the applicant on 2 June 1999 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.
8. On 2 June 1999, 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, request for discharge in lieu of trial by courts-martial. 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 made a good move enlisting in the Army because it got him off the streets. His wife had asked him for a divorce, shortly upon his arrival to his duty station. Her decision shot down all his goals. It became hard for him to support himself and his family in two separate households. He went AWOL in an attempt to work things out in his marriage. His unit did not help him with his family issues. He wished things had worked out as planned. He hoped he would be able to return to the Army Reserve and be able to deal with his issues, better and wiser.
9. The applicant's commander recommended approval of the applicant's request for discharge on 2 February 2000. His commander noted that based on the applicant's previous record, punishment could be expected to have a minimal rehabilitative effect. He believed his discharge would be in the best interest of all concerned.
10. The separation authority approved the applicant's request for discharge in lieu of trial by courts-martial on 2 March 2000, and directed his discharge UOTHC and his reduction in grade to E-1.
11. The applicant was discharged on 27 July 2000. His DD Form 214 (Certificate of Release of Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. He was discharged in the lowest enlisted grade and his service was characterized as

UOTHC. He completed 2 years, 1 month, and 22 days of net active service this period with 238 days of lost time.

12. 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.

13. 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:

1. After reviewing the application, all supporting documents, and the evidence found within the military record and published Department of Defense guidance for liberal consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, his record of service, the frequency and nature of the misconduct, his request for discharge and the reason for his separation. The Board found insufficient evidence of in-service mitigating factors and the applicant did not provide evidence of post-service achievements or reference letters for the Board to consider in support of clemency determination. Based on a preponderance of 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.

[REDACTED]

[REDACTED]

[REDACTED]

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) 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//