

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 December 2024

DOCKET NUMBER: AR20240003905

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) character of service.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record), 6 February 2024

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 when he enlisted in 1972, he was working with a recruiter to try to get an engineering military occupational specialty (MOS). His recruiter signed him up for a combat MOS and that was not what he wanted, this broke his faith in the military and made him not want to try his MOS.
3. The applicant enlisted in the Regular Army on 10 July 1972, for a 4-year period. The highest rank he attained was private/E-2.
4. The applicant's DA Form 20 (Enlisted Qualification Record) shows he went absent without leave (AWOL) for the following periods:
 - from 4 May 1973 to 13 May 1973
 - from 31 May 1973 to 21 June 1973
 - from 6 August 1973 to 19 September 1973
 - from 18 December 1973 to 15 February 1974
5. A DA Form 3836 (Notice of Return of US Army Member from Unauthorized Absence) shows the applicant was AWOL on 24 April 1973 and he was apprehended by civil authorities on 7 May 1973.

6. Court-martial charges were preferred against the applicant, for violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) is not available for review.

7. Before a summary court-martial on 6 August 1973, the applicant was found guilty of one specification of disobeying a lawful order from his superior noncommissioned officer on or about 26 June 1973 to change into the proper duty uniform. He was sentenced to forfeiture of \$200.00 pay per month for two months, confinement at hard labor for 45 days, and reduction to the grade of E-1. The sentence was adjudged on 17 July 1973. It was approved and ordered to be duly executed on 6 August 1973.

8. A DA Form 3836 shows he was AWOL on 18 December 1973 to 16 February 1974 and where he surrendered to military authorities.

9. The applicant's official military personnel file is void of the facts and circumstances leading to his discharge, to include his separation packet. However, his DD Form 214 (Report of Separation from Active Duty) shows he was discharged on 25 March 1974, under the provisions of Army Regulation (Personnel Separations - Enlisted Personnel), paragraph 10-1 (Discharge for the Good of the Service), in the grade of E-1. His characterization of service was UOTHC, with separation program designator 246 and reenlistment code RE-4. He was credited with 1 year, 3 months, and 29 days of net active service this period with 137 days of time lost. He was not awarded a military occupational specialty.

10. The applicant was issued a DD Form 215 (Correction to DD Form 214) showing he received correction to his reenlistment code from RE-4 to RE-3, RE-3B, and RE-3C.

11. Administrative separations under the provisions of Army Regulation 635-200, Chapter 10 are voluntary requests for discharge for the good of the service. A characterization of service of UOTHC is normally considered appropriate.

12. 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, while in training, the applicant was charged with commission of an offense (or

offenses) 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. Also, the applicant provided insufficient evidence of a persuasive nature of post-service achievements or letters of reference in support of the applicant's clemency determination. 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.

12/20/2024

X

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 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. 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 conditions other than honorable is normally considered appropriate.

b. 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.

c. 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.

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, 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//