

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 December 2024

DOCKET NUMBER: AR20240004084

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

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

- DD Form 149 (Application for Correction of Military Record), 13 February 2024
- self-authored statement, 8 February 2024
- DA Form 2166-6 (Enlisted Evaluation Report), 19 November 1986
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 5 October 1989
- character reference statement, from E.C.
- character reference, from N.S., 15 February 2024

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 is making the request for an honorable discharge because he was an outstanding Soldier, rated a top Soldier in his previous enlisted evaluation report issued by his previous command, until he went to his last unit where he believes the chain of command was toxic and displayed very little leadership.

a. At his final unit, in Fort Hood, he felt uneasy, his chain of command believed his previous evaluation ratings were false, and due to this event, he felt harassed by his chain of command, starting with his section chief. He had an incident where he slipped and fell off a military vehicle, he had surgery and was issued a profile for which he was unable to wear headgear.

b. He had a break-in incident in his living quarters, he informed his leadership, and they condemned him. He was ordered to go to the field, although his doctor had

prohibited him. He had enough and decided not to go to the field because of the doctors' orders.

c. He attributed the character of his discharge to the toxic leadership from his final unit, he knows he was a good Soldier and was even offered a position in a sister unit despite his injuries. He probably did not approach the problem correctly; however, he believes if he had good leadership and a positive environment he would have made the Army a career.

3. The applicant enlisted in the Regular Army on 4 November 1980, for a 4-year period. He reenlisted on 8 July 1986, for an additional 3-year period. He was awarded the military occupational specialties of 12F (Engineer Tracked Vehicle Crewman) and 13B (Cannon Crewmember). The highest rank he attained was sergeant/E-5.

4. Two DA Forms 4187 (Personnel Action) shows his duty status changed from present for duty (PDY) to absent without leave (AWOL) effective 7 December 1988 and from AWOL to dropped from rolls effective 7 January 1989.

5. A DD Form 616 (Report of Returnee of Absentee) shows the applicant was apprehended by civil authorities on 21 August 1989, and apprehension efforts were terminated.

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) shows he was charged with going AWOL from on or about 7 December 1988 and remaining AWOL until on or about 20 August 1989.

7. The applicant consulted with legal counsel on 23 August 1989, and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected not to submit a statement in his own behalf.

8. On 19 September 1989, the applicant's immediate commander recommended approval of the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, and further recommended issuance of a UOTHC discharge.

9. On the same date, the separation authority approved the applicant's request for discharge for the good of the service and further directed the applicant receive an UOTHC discharge, and reduction to the lowest enlisted grade of E-1.

10. The applicant's DD Form 214 shows he was discharged on 5 October 1989, under the provisions of AR 635-200, Chapter 10, for the good of the service-in lieu of court martial, in the grade of E-1. He received an UOTHC characterization of service, with separation code KFS, and reenlistment code of RE-3, 3B, and 3C. He was credited with 8 years, 2 months, and 19 days of net active service with time lost from 7 December 1988 to 19 August 1989. His awards include the Army Good Conduct Medal, Army Service Ribbon, and Overseas Service Ribbon. The Remarks Block:

- Listed his immediate reenlistment but did not list his continuous honorable service
- Listed his excess leave from August to October 1989

11. The applicant additionally provides:

a. His DA Form 2166-6 (Enlisted Evaluation Report) dated from June 1986 thru October 1986 showing while serving as a sergeant he received positive accolades from his rater and endorser and was additionally recommended for promotion ahead of his peers.

b. Two-character reference statements, from E.C. and N.S., both of whom summarize the applicant as a hard worker who never missed work, who displayed good people skills while handling the public, he is someone who worked two jobs to support his family, a wonderful person and friend who would assist anyone in need of help.

12. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, from the Soldier, to avoid a trial by court-martial. An UOTHC character of service is normally considered proper.

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.

14. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations: The applicant is applying to the ABCMR requesting an upgrade of his 5 October 1989 discharge characterized as under other than honorable conditions. He states:

"I am requesting an increase to Honorable condition for the following reasons:

1. I was an outstanding soldier until I got to my last unit. The chain of command was toxic and displayed very little leadership skills. As denoted in my prior unit's EER [enlisted evaluation report], I was a top soldier and was recommended for assignments of increased responsibilities.

2. I served my country with honor and wanted to make a career in the army until I was assigned to my last unit. Enclosed is a copy of an EER from my prior unit and letters from co-workers."

b. The Record of Proceedings details the applicant's military service and the circumstances of the case. The DD 214 for the period of service under consideration shows he entered the Regular Army on 4 November 1980 and was discharged under other than honorable conditions on 5 October 1989 under the separation authority provided by chapter 10 of AR 635-200, Personnel Separations – Enlisted Personnel (26 May 1989): Discharge for the Good of the Service. The DD 214 shows one period of lost time: 7 December 1988 thru 19 August 1989 (256 days). No period of service in a hazardous duty pay or imminent danger pay is listed.

c. A Charge Sheet (DD form 458) shows the applicant was charged with absence without leave (AWOL) from 7 December 1988 thru 20 August 1989. On 23 August 1989, the applicant voluntarily requested discharge in lieu of trial by courts-martial under provisions in chapter 10 of AR 635-200 for the charge of violating Article 86 of the

UCMJ: "AWOL 7 DEC 88 – 20 AUG 1989." His request was approved on 19 September 1989 with the directives he be issued an Under Other Than Honorable Conditions discharge and reduced to Private (E01).

d. In his self-authored letter, he mentions a left shoulder surgery but that is not the reason he says he went AWOL when he goes on to state: "Sometime prior to this incident, my living quarters were broken into. I informed the Platoon Sergeant about the incident and that I had an idea of who did it. He called me a liar and threaten to punish me. At this point I had enough of the abuse and the lack of leadership that I had experience in the unit. The platoon sergeant even order me to go to the field even though the doctor had prohibited me to go because of my injuries. After all of this abuse, I just couldn't take it anymore and decided to leave and not go the field. I attribute the character of my discharge to the toxic leadership from that unit. I was a good soldier during my entire time in the service and I was even offered a job from the sister unit despite my injuries but was not let go. Had there been good leadership and a positive environment for sure I would have made a career in the army."

e. No medical documentation was submitted with the application and his period of Service predates the EMR. JLV shows the applicant has no medical conditions on his medical problem list, is not registered with the VA, and has no VA service-connected disabilities.

i. Kurta Questions:

- Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO
- Did the condition exist or experience occur during military service? N/A
- Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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.

a. Character of service upgrade: The evidence of record shows the applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he 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. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's determination that in the absence of his medical records, there is insufficient evidence to support the applicant had a mental health condition that mitigates his misconduct. Also, although the applicant provides character reference letters in support of a clemency determination, the Board found such letters insufficient and do not outweigh the misconduct for which he was discharged. 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.

b. Continuous honorable service: Grant. The Board noted that the applicant's service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending his DD Form 214 ending on 5 October 1989 to show in the Remarks Block

- SOLDIER HAS COMPLETED FIRST TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 19801104 UNTIL 19860707

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading his discharge.

[REDACTED]

[REDACTED]

[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, USC, 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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided guidance for the administrative separation of enlisted personnel:

a. Chapter 10 of this regulation provided a member who has committed an offense or offenses, the punishment for which, under the Uniform Code Military Justice and the Manual for Courts-Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the Service. The discharge request may be submitted after court-martial charges are preferred against the member, or, until final

action on the case by the court-martial convening authority. A member who is under a suspended sentence of a punitive discharge may also submit a request for discharge for the good of the Service. An under other than honorable conditions discharge certificate normally is appropriate for a member who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs, on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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//