

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 November 2024

DOCKET NUMBER: AR20240004149

APPLICANT REQUESTS: in effect, an upgrade to 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)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 19 May 2003

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. A review of the applicant's service record shows:

- a. He enlisted in the Regular Army on 26 September 2001.
- b. DD Form 458, 7 April 2003, shows charges were preferred against the applicant for a violation of the UCMJ for:
 - being AWOL from 26 July 2002 to 6 August 2002
 - being AWOL from 3 September 2002 to 2 October 2002
 - being AWOL from 25 October 2002 to 25 March 2003
- c. FH Form 4-50 (Court-Martial Charges), 7 April 2003, reflects the chain of command, after having reviewed the attached charges, and concluded that each offence is supported by the evidence, unanimously recommended the applicant be tried by Special Court Martial empowered to issue a bad conduct discharge.
- d. On 9 April 2003, the applicant requested a voluntary discharge in lieu of trial

by court-martial under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10. After consulting with appointed counsel, he was advised of the nature of his discharge and its effects, of the rights available to him, and the effect of any action taken by him in waiving his rights. He also stated that under no circumstances did he desire further rehabilitation, as he had no desire to perform further military service. He further acknowledged:

- he could consult with consulting counsel as his military counsel and/or civilian counsel at no expense to the government
- the possible effects of a UOTHC discharge
- he was advised he could submit any statements he desired in his own behalf, he elected not to do so
- he could be ineligible for many, or all benefits administered by the VA
- he could be deprived of many, or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he could expect to encounter substantial prejudice in civilian life by reason of a general under honorable conditions discharge

e. On 18 April 2003, the separation authority directed that the applicant will be discharged for the good of the service under the provisions of Chapter 10, Army Regulation 635-200, and issued a under other than honorable conditions discharge. He further directed he be reduced to the lowest enlisted grade.

f. His DD Form 214 shows he was discharged on 19 May 2003 pursuant to Army Regulation 635-200, Chapter 10 with an under other than honorable conditions characterization of service. He completed 1 year, 1 month, and 11 days of active service. He was awarded or authorized the National Defense Service Medal. His DD Form 214 also shows in:

- item 18 (Remarks): Dates of Time Lost During This Period Under Title 10, U.S. Code 972, 26 July 2002 to 5 August 2002; 3 September 2002 to 1 October 2002; 25 October 2002 to 23 November 2002; and 25 November 2002 to 24 March 2003
- item 26 (Separation Code): KFS
- item 27 (Reentry Code): 4
- item 28 (Narrative Reason for Separation): in lieu of trial by court-martial

3. The applicant did not apply to the Army Discharge Review Board for an upgrade of his characterization of service within that board's 15-year statute of limitations.

4. By regulation, a member who has committed an offense or offenses, the punishment for any of which includes a bad conduct or dishonorable discharge, may submit a

request for discharge for the good of the service. An Under Other Than Honorable Discharge Certificate normally is appropriate for a member who is discharge for the good of the service.

5. In reaching its determination, the Board can consider the applicants 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.

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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 (Armed Forces), 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 policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. Honorable discharge. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. General discharge. 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty (AD).

c. Under other than honorable conditions discharge. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial when the reason for separation is based upon a pattern of behavior that constitutes significant departure from the conduct expected of Soldiers of the Army.

d. Chapter 10, Discharge in Lieu of Trial by Court-Martial. A Soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the manual for courts-martial (MCM) 1998 includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. The discharge request may be submitted after court-martial charges are preferred against the Soldier or, where required, after referral, until final action by the court-martial convening authority.

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/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 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. 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//