

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 December 2024

DOCKET NUMBER: AR20240004494

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

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

- DD Form 149 (Application for Correction of Military Record), 2 February 2024
- self-authored statement
- official military personnel file, 42 pages
- character reference statement, from R.A.R. Jr
- character reference statement, from Pastor S.G., 14 November 2023
- National Personnel Records Center correspondence, 26 January 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, in effect, when he enlisted, he was proud to wear the uniform and served within the 82nd Airborne as some of his other family members did.

a. He was unable to complete his service because at the time his family was of concern for him. His wife was pregnant and having an affair, although he was led to believe the child was his. This situation affected him a great deal, he became angry and emotional and was not thinking clearly.

b. He is trying to right the wrongs he has done in his life. He would go back to his young age of 23 and change his outcome in a heartbeat. He asks for forgiveness, wants to celebrate Veterans Day with the Veterans he knows around him, and wear the 82nd Airborne hat. He requests an upgrade of his discharge to accomplish these goals.

c. Since his discharge, he has maintained being a productive citizen, he gives back to his community by volunteering at his local church, he assists with rebuilding bicycles

and the proceeds go to children at local homeless shelters. He often wonders how much better his life could have been if he remained in the service and how his children's lives would have been impacted. He regrets his discharge, thanks the Board for their time and consideration, and believes leaving the service was the worst mistake of his life.

3. The applicant enlisted in the Regular Army on 16 May 1979, for a 3-year period. He was awarded the military occupational specialty of 11B(Infantryman).

4. The applicant went absent without leave (AWOL) on or about 17 September 1979. His DA Form 4187 (Personnel Action) shows he surrendered to military authorities on 27 September 1979. Additionally, he went AWOL on or about 9 October 1979 and his DA Form 4187 shows he was apprehended by civilian authorities and returned to military control on or about 21 January 1980.

5. Court-martial charges were preferred against the applicant on 25 January 1980, 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 17 September 1979 and remaining AWOL until on or about 27 September 1979 and going AWOL from on or about 9 October 1979 and remaining AWOL until on or about 21 January 1980.

6. The applicant consulted with legal counsel on 30 January 1980, and executed a written request for discharge for the good of the service under the provisions of Army Regulation 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 understood he may encounter substantial prejudice in civilian life and elected to not submit a statement in his own behalf.

7. On 6 February 1980, the applicant's immediate commander recommended approval of his request for separation and further recommended issuance of an UOTHC discharge. Additionally referencing the applicant's two periods of AWOL, stating he went AWOL because of family problems and felt he could solve his problems better in the civilian community.

8. The applicant's intermediate commander's recommended approval of the applicant's request for discharge for the good of the service and further recommended an UOTHC discharge.

9. The separation authority approved the applicant's request for discharge for the good of the service on 12 February 1980, and further directed he receive a UOTHC discharge.

10. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 20 February 1980, under the provisions of Army Regulation 635-200, Chapter 10, for conduct triable by court-martial. He received an UOTHC characterization of service, separation code JFS, and reenlistment code of 4. He was credited with 5 months and 11 days of net active service with time lost from 17 September 1979 to 26 September 1979 and from 9 October 1979 to 20 January 1980.

11. The applicant additionally provides:

a. Documentation from his official military personnel file, varying from his enlistment contract, separation documents, numerous DA Forms 4187 (Personnel Action) changing his duty status, and various reports for suspension of favorable personnel actions showing his status of AWOL.

b. A character reference statement from the applicant's son, who states in effect, his father has always lived with regret from leaving the military and the family has felt the consequences of his departure. He stated his father missed the sense of purpose and longs to be included in the members shared experiences who served. He believes his father learned from his mistakes, and if awarded an upgrade of his discharge he would prove himself a valuable dedicated member of the military once again.

c. A character reference statement from the applicant's Pastor, who states the applicant is connected within their church and does community service and volunteers in the outreach ministry. The applicant is faithful to follow through with his time and gives his energy to whatever is asked of him to do.

d. Correspondence from the National Personnel Record Center dated 26 January 2024, who referenced their enclosed separation documentation sent to the applicant.

12. Discharges under the provisions of Army Regulation 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, 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 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 evidence shows the applicant was charged with commission of offenses (AWOL) punishable under the UCMJ with a punitive discharge. Subsequent to 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. The Board found no error or injustice in his separation processing. The applicant provided two-character reference letters in support of a clemency determination. However, the Board found those letters 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.

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.

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, 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 of 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.

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//