

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 December 2024

DOCKET NUMBER: AR20240004573

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to honorable or general under honorable conditions.

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

DD Form 149 (Application for Correction of Military Record)

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 was targeted by people, and they were trying to take his rank. He received medals and good marks. He was given orders that were not given by the correct chain of command. Captain Mc__ was having it out for him and kept messing with him. When he was getting hurt, he needed more time and went out anyway. He did his time and deserve a discharge upgrade. If he gets the discharge upgrade, he will use it to buy a house and get medical. He has medical issues. He is an older veteran, and he is bettering his life.
3. The applicant enlisted in the Regular Army on 5 August 1980. He served in Germany for his first duty station.
4. He received non-judicial punishment (NJP) under the Uniform Code of Military Justice (UCMJ):
 - On 1 June 1981, for on or about 12 May 1981, without authority, fail to go at the time prescribed to his appointed place of duty
 - 20 January 1982, on or about 19 January 1982, for disobeying a lawful order; he was reduced to private/E-2 (suspended for 30 days)
 - On 22 January 1982, his suspended reduction was vacated

5. DD Form 458 (Charge Sheet) shows court-martial charges were preferred on 21 January 1983, for the charge of AWOL and its specification of being AWOL from on or about 13 November 1982 and remaining so absent until on or about 13 January 1983.

6. On 21 January 1983, after consultation with counsel voluntarily requested discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. He understood that he may request discharge for the good of the service because of the charge preferred against him under the Uniform Code of Military Justice, which authorizes the imposition of a bad conduct discharge or dishonorable discharge. He also understood:

- He may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Discharge Certificate
- He may be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered by the Veterans Administration
- He may be deprived of his rights and benefits as a veteran under both Federal and State law
- He may expect to encounter substantial prejudice in civilian life because of an under other than honorable conditions discharge

7. His chain of command recommended approval of separation under the provisions of AR 635-200, chapter 10, and that he receive an Other Than Honorable Conditions Discharge Certificate.

8. On 3 February 1983, the separation authority approved discharge under the provisions of AR 635-200, chapter 10. He directed a Discharge Certificate Under Other Than Honorable Conditions be issued, and member be reduced to the lowest enlisted grade.

9. Accordingly, he was discharged on 15 February 1983, under conditions other than honorable under the provisions of AR 635-200, chapter 10. His DD Form 214 shows he completed 2 years, 3 months, and 11 days net active service this period. It also shows:

- Item 26 (Separation Code): JFS
- Item 27 (Reenlistment Code): RE-3, 3B & 3C
- Item 28 (Narrative Reason for Separation): For the good of the service
- Item 29 (Dates of Time Lost During this Period): 821113 – 830112 (13 November 1982 – 12 January 1983)

10. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within the Board's 15-year statute of limitations.

11. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. 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 other than honorable conditions is normally considered appropriate.

12. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's request and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of AWOL.

2. The Board noted the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board found the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a general under honorable conditions discharge. Therefore, the Board denied relief.

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, 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 (AR) 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. 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 other than honorable conditions is normally considered appropriate.

a. Paragraph 3-7a (1) states an honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and 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 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. 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//