

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 December 2024

DOCKET NUMBER: AR20240005566

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under other than honorable conditions discharge to general or honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20220001583 on 22 August 2022.
2. The applicant states the Judge Advocate General representatives at that time assured him that the chapter 10 discharge would become an honorable discharge in six months. He always wanted to serve in the U.S. Army, and he did but made a mistake as a 19-year-old soldier. He regrets his mistake mercifully. He has been deemed ineligible to have a burial plot at the Veterans Memorial Cemetery for him and his wife.
3. The applicant enlisted in the Regular Army on 19 August 1980. He held military occupational specialty 76V (Storage Specialist).
4. A partial Charge Sheet, shows he was charged with wrongfully purchasing, selling, possessing, and transferring some amount of marijuana in the hashish form, on 27 April 1982.
5. On 23 June 1982, after consulting with counsel, the applicant submitted a request for discharge for the good of the service, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, in lieu of trial by court-martial. He understood that he may request discharge for the good of the service because of the charges which have been preferred against him under the Uniform Code

of Military Justice, which authorizes the imposition of a bad conduct or dishonorable discharge. He understood that he may be discharged under other than honorable conditions (UOTHC) and furnished an UOTHC Discharge Certificate. He understood:

- as a result of the issuance of such discharge, he will 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 UOTHC discharge
- He further understood that there is no automatic upgrading nor review by any government agency of a less than honorable discharge and that he may apply to the Army Discharge Review Board (ADRB) or the ABCMR if he wished review of his discharge
- He realized that the act of consideration by either board does not imply that his discharge will be upgraded

6. On 28 June 1982, he completed a Standard Form 93 (Report of Medical History) which shows he was in good health. He also underwent a mental status evaluation, on the same date, and no significant mental illness was found. He was mentally responsible, able to distinguish right from wrong, able to adhere to the right, and he had the mental capacity to understand and participate in board proceedings.

7. His chain of command recommended approval of his request for discharge with an UOTHC discharge.

8. On 30 June 1982, the appropriate authority approved his request for discharge under the provisions of AR 635-200, chapter 10, for the good of the service in lieu of trial by court-martial and directed the issuance of an Under Other Than Honorable Conditions Discharge Certificate.

9. Accordingly, on 19 July 1982, he was discharged in pay grade E-1. His DD Form 214 shows he completed 1 year, 11 months, and 1 day net active service this period. His DD Form 214 also shows in:

- Item 24 (Character of Service): Under Other Than Honorable Conditions
- Item 25 (Separation Authority): Chapter 10, AR 635-200
- Item 26 (Separation Code): JFS
- Item 27 (Reenlistment Code): RE3, 3C
- Item 28 (Narrative Reason for Separation): Administrative Discharge Conduct Triable by Court-Martial

10. There is no evidence the applicant applied to the ADRB within the board's 15-year statute of limitations.

11. On 22 August 2022, in ABCMR Docket Number AR20220001583, the Board considered his application but determined the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned. The Board denied his request.

12. 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.

13. 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. The applicant provided insufficient evidence of post-service achievements or character letters of support that attest to his post honorable conduct that might have mitigated the misconduct that resulted in the discharge characterization.

2. The Board determined 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 or honorable. Therefore, the Board found reversal of the previous Board determination is without merit and denied relief.

BOARD VOTE:Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

[REDACTED] [REDACTED] [REDACTED] DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20220001583 on 22 August 2022.

[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. 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.

2. 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//