

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2025

DOCKET NUMBER: AR20240009782

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

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), 1 May 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 24 July 1981

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 when coming back from Panama, he was accused of having marijuana, to which he did not. The unit came back on a C-140 on or about 15 November 1980, they had dogs sniff their belongings and they did not find marijuana. At his court-martial, they presented a bag and stated it was marijuana. The applicant believes he was framed by his Sergeant, Sergeant B____, who was prejudice and told him he was going to make sure he was kicked out of the military.

3. The applicant enlisted in the Regular Army on 26 December 1979. The highest rank he attained was private/E-2.

4. On 12 February 1981, the applicant accepted nonjudicial punishment, under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for wrongfully having marijuana in his possession on or about 19 January 1981. His punishment imposed was reduction to E-1 and 30 days confinement.

5. The applicant's duty status changed as follows:

- from present for duty (PDY) to absent without leave (AWOL) effective 17 February 1981
- from AWOL to PDY effective 20 February 1981
- from PDY to AWOL effective 28 February 1981
- from AWOL to dropped from rolls (DFR) effective 30 March 1981
- from DFR to attached effective 1 June 1981, when he was apprehended by civilian authorities

6. Court martial charges were preferred against the applicant for violation of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows he was charged with going AWOL on or about 28 February 1981 and remaining AWOL until on or about 1 June 1981.

7. He consulted with legal counsel on 9 June 1981, 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 a 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. He acknowledged that he may be deprived of many rights and benefits as a Veteran under both Federal and State law. Additionally, he elected to submit a statement in his own behalf declaring he went AWOL from 28 February 1981 to 1 June 1981.

8. On 16 June 1981, the applicant's immediate and intermediate commander's recommended approval of his request for separation and further recommended issuance of an UOTHC discharge.

9. On 22 June 1981, the separation authority approved the applicant's request for discharge for the good of the service. He further directed the applicant be furnished an UOTHC discharge.

10. The applicant's DD Form 214 shows he was discharged on 24 July 1981, under the provisions of AR 635-200, Chapter 10, for conduct triable by court-martial, in the grade

of E-1. He received a UOTHC character of service. He was credited with 1 year, 3 months, and 23 days of active service.

11. The Army Discharge Review Board reviewed the applicant's request for an upgrade of his UOTHC discharge on 21 September 1984. The Board determined the applicant was properly and equitably discharged and denied his request for a change in the character and/or reason of his discharge.

12. 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 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 being absent without leave from 28 February 1981 to 1 June 1981, 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. The Board noted the applicant's length of absence and 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
:XX	:XX	:XX	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 //SIGNED//

CHAIRPERSON

Signed by:

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.

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.

//NOTHING FOLLOWS//