

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 September 2023

DOCKET NUMBER: AR20230002674

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service, and an appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 2 April 1998
- Certificates of Completion, Emmaus Worldwide, dated 10 October 2020 to 14 May 2021 (four)
- Student Transcript, Blackstone Career Institute, 12 January 2021
- letter, Blackstone Career Institute, 12 January 2021
- Certificates of Completion, dated 27 June 2022 to 13 September 2022 (four)

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, he did not receive proper counsel. He was not offered other options such as "Alcoholics Anonymous" or drug rehabilitation. Nor did he understand that there were other options available to him.
3. The applicant enlisted in the Regular Army on 10 September 1996. He was awarded military occupational specialty (MOS) 12B (Combat Engineer).
4. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice UCMJ. However, his DD Form 458 (Charge Sheet) is not available for review.

5. The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing.

a. However, a memorandum dated 1 April 1998, shows the applicant voluntarily requested discharge, in lieu of trial by court-martial, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10.

b. The separation authority approved his request for discharge, and further directed the applicant be reduced to the lowest enlisted grade and be issued an UOTHC discharge.

6. The applicant was discharged on 2 April 1998, in the grade of E-1. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. His character of service was UOTHC, and he was credited with 1 year, 6 months, and 23 days of net active service.

7. The applicant provides:

a. Student transcript and a letter from Blackstone Career Institute, dated 12 January 2021, which indicates he completed a course of study in the Legal Assistant/Paralegal Certificate Program.

b. Eight Certificates of Completion, dated between 10 October 2020 and 13 September 2022, show post-service accomplishments and efforts towards personal improvement.

8. Administrative separations under the provisions of Army Regulation 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

9. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

#### BOARD DISCUSSION:

1. The applicant's request for a personal appearance was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance before the Board is not necessary to serve the interest of equity and justice in this case.

2. 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 contentions, the military record, and regulatory guidance. The Board reviewed documentation provided by the applicant in consideration of his request. The Board considered the nature of the offenses which lead to his discharge. He acknowledged that he had been afforded to consult with counsel and voluntarily requested discharge in lieu of trial by courts-martial. In assuming the presumption of administrative regularity and considering the nature of the offenses that led to the characterization of his service and discharge, the Board concluded there was insufficient evidence of an error or injustice which would warrant a change to the applicant's character of service.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.
  - a. The regulation provides the ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
  - b. Additionally, the ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.
3. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
  - a. 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.
  - b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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.
  - c. 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.

4. 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//