

IN THE CASE OF: ██████████

BOARD DATE: 11 January 2024

DOCKET NUMBER: AR20230005636

APPLICANT REQUESTS: his under other than honorable conditions (UOTHC) discharge be upgraded to honorable, and restoration of his rank to specialist (SPC)/E-4. Additionally, he requests an appearance before the Board via video/telephone.

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Marriage Certificate
- Birth Certificate
- Character Letters (three)

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 his current separation status is unfair and is negatively affecting him in regard to disability claims and applying for Veterans Administration benefits such as applying for a home loan and his daughter's benefits for college tuition assistance in ██████████. He was young and made very bad choices in the past, but he is older and wiser now and wants his family to benefit from everything other veterans benefit from.
3. The applicant enlisted in the Regular Army on 19 November 1991 for four years. His military occupational specialty was 63W (Wheeled Vehicle Repairer). His date of rank to SPC/E-4 was 1 April 1994.
4. He served in Panama from 16 August 1993 through 12 August 1996 and in El Salvador from 4 January 1995 through 15 April 1995.

5. A Military Justice Information Sheet, dated 26 July 1996, shows the applicant was charged with:

- wrongful possession of marijuana in the Republic of Panama, wrongful use of marijuana, and wrongful distribution of marijuana on or about 1 October 1995 to 15 December 1995
- wrongful possession of cocaine in the Republic of Panama, wrongful use of cocaine, and wrongful distribution of cocaine on or about 15 November 1995 to 15 December 1995

6. This form further states the applicant made a statement to the Criminal Investigation Division (CID) on 1 March 1996, admitting to cocaine use with Private (PVT)/E-1 [REDACTED] and admitted to purchasing and using marijuana on several occasions with other Soldiers.

a. PVT [REDACTED] made a statement to CID admitting to purchasing and using cocaine with the applicant on several occasions on 28 February 1996; and that the applicant was also known to smoke crack, inject drugs and he was also planning on shipping cocaine back to the States.

b. The command recommended the applicant's separation with an UOTHC discharge.

7. The applicant consulted with legal counsel on 16 July 1996 and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the Uniform Code of Military Justice (UCMJ); the possible effects of a UOTHC discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10, in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

b. He elected to submit a statement in his own behalf, wherein he stated he had served his Country proudly during his enlistment. He participated successfully in several deployments and made many sacrifices to accomplish the missions at hand. He had a family and regretted that he used extremely poor judgement. He was sorry for what he

had done. From the Alcohol and Drug Abuse Prevention and Control program he had learned a lot about the dangers of drug use, and the use of healthy alternatives to dealing with problems. He asked for an under honorable conditions (general) discharge.

8. The applicant's immediate commander recommended approval of his request for discharge and that his service be characterized as UOTHC. His chain of command recommended approval.

9. The separation authority approved the applicant's request for discharge on 29 July 1996 and directed that the applicant be reduced to the lowest enlisted grade and receive an UOTHC discharge.

10. Orders 214-10, dated 1 August 1996, issued by Headquarters, U.S. Army South, shows the applicant was assigned for transition processing in the rank of SPC/E-4.

11. On 13 August 1996, Orders 214-10 changed the applicant's grade to E-1.

12. The applicant was discharged on 13 August 1996. His DD Form 214 shows he was discharged in the grade of E-1, under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. He was assigned Separation Code KFS with Reentry Code 3. His service was characterized as UOTHC. He completed 4 years, 8 months, and 25 days of net active service. His awards include the: Joint Meritorious Unit Award, Army Good Conduct Medal, National Defense Service Medal, Humanitarian Service Medal, Army Service Ribbon, Overseas Service Ribbon.

13. The issuance of a discharge under the provisions of Army Regulation 635-200, Chapter 10, required the applicant to have requested from the Army – voluntarily, willingly, and in writing – discharge in lieu of trial by court-martial. It is presumed that all requirements of law and regulation were met, and the rights of the applicant were fully protected throughout the separation process. No evidence that would indicate the contrary was provided.

14. The applicant provides:

a. A copy of his DD Form 214 discussed above and a copy of his marriage certificate and his daughter's birth certificate.

b. Character letters that attest to the applicant's resolve and determination to be a positive and fruitful investment, as he has demonstrated his loyalty and perseverance many times over. He is dependable, supports everyone and shares his knowledge and technical experience. He is punctual, humble and communicates in a professional manner. He works under stressful circumstances and meets short suspense dates.

15. 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:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and found the character letters the applicant provided insufficient in support of a clemency determination considering the nature of his misconduct. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

4/1/2024

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. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.
 - a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

 - b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

3. Army Regulation (AR) 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. 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.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

4. Army Regulation 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The information entered thereon reflects the conditions as they existed at the time of separation. It states for: Block 4a (Grade, Rate, or Rank) 4b (Pay Grade) enter the rank.

5. 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/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.

//NOTHING FOLLOWS//