

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 January 2024

DOCKET NUMBER: AR20230006412

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

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

- DD Form 149 (Application for Correction of Military Record), 20 March 2023
- Franchise Agreement and Biography
- Certificate, 3 April 2020

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, since he left the service, he has led an exemplary life. He has raised a great family and his children have become successful in their lives, one is a lawyer, another works for NASA, and one is becoming a nurse.
3. The applicant enlisted in the Regular Army on 16 August 1989, for a period of 4 years. The highest rank he attained was private/E-2 with a date of rank of 16 February 1990.
4. Court-martial charges were preferred against the applicant on 12 July and 27 July 1990 for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Forms 458 (Charge Sheet) show he was charged with the following charge(s) and specification(s):
 - a. Violation of UCMJ, Article 112a, in that he did on or about 20 April 1990, wrongfully possess some amount of amphetamines

b. Violation of UCMJ, Article 134, in that he did on or about 20 April 1990, with intent to prevent its seizure, dispose of a razor blade and some amount of amphetamines.

c. Violation of UCMJ, Article 112a, in the he did on or about 23 July 1990, wrongfully possess one-half gram of amphetamines.

d. Violation of UCMJ, Article 112a, in that he did on or between 1 March 1990 and on or about 20 April 1990, distribute some amount of amphetamines.

5. The applicant consulted with legal counsel on 10 August 1990.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the UCMJ, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, for the good of the service, under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. 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 acknowledged making this request free of coercion. He further acknowledged understanding that if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veteran's Administration (VA), and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. He was advised he could submit any statements he desired in his own behalf. He elected not to submit a statement.

6. The applicant's immediate and intermediate commander recommended approval of the request for discharge for the good of the service and further recommended the issuance of an UOTHC discharge.

7. On 15 August 1990, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, with an UOTHC character of service and directed his reduction to the lowest enlisted grade.

8. Accordingly, the applicant was discharged on 21 August 1990, under the provisions of AR 635-200, Chapter 10, for the good of the service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was characterized as UOTHC, with separation code "JFS" and reenlistment code "RE-3". He was credited

with 1 year and 6 days of net active service this period. His awards and decorations include the Air Assault Badge.

9. He additionally provides certificate of existence with status in good standing and documentation for the franchise he operates.

10. There is no indication the applicant applied to the Army Discharge Review Board within that Board's 15-year statute of limitations.

11. 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 trial by court-martial. An UOTHC character of service is normally considered appropriate.

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

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records and published DoD guidance in determining discharge upgrade requests. The Board considered the severity of the misconduct and whether there was sufficient evidence of mitigating circumstances or post-service accomplishments to weigh in favor of clemency determination. The Board agreed that the applicant acknowledged his past mistakes and states he has used them to move forward. After due consideration of the request, the Board determined the evidence presented sufficient to warrant a recommendation for relief and a correction to his character of service is warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending the applicant's DD214 to show in block 24 (Character of Service) as under honorable conditions

- Characterization of Service: Honorable
- Separation Authority: Secretarial Authority
- Separation Code: No change
- Reentry (RE) Code: No change
- Narrative Reason for Separation: No change



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 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

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, Boards 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//