

IN THE CASE OF: [REDACTED].

BOARD DATE: 12 September 2024

DOCKET NUMBER: AR20230006816

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-Authored Statement
- Consent for Personal Records Check – Sheriff's Office
- [REDACTED] Crime Information Center Report
- Letter of Support
- Medical Documents

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 provides:

a. A self-authored statement of his service and the situation that led to him being absent without leave (AWOL). The reason he cites is the mother of his child, who was deaf, had been hospitalized. He had spoken with members of his command and was advised that he should go be with her which he did. When he received a letter advising him to return to his command he did and went before a board that recommended he be administratively discharged. The applicant also provides a recounting of his life situation prior to his enlistment including the death of his mother at age 12 and the separation of his family following her death and his wife's hospitalization. He is requesting the correction in order to apply for medical care through the Department of Veterans Affairs (VA).

a. [REDACTED] Crime Information Center Report showing he was found guilty of (misdemeanor) driving under the influence on 31 December 2010 and (felony) false making, altering, forging, counterfeiting of lottery tickets on 21 October 2013.

b. 54 pages of post-service medical records from:

(1) Army Medical Center - Eisenhower-Gordon showing diagnoses of:

- Adjustment disorder
- Cancer - malignant neoplasm of prostate
- Chronic kidney disease stage 3B
- Acute renal failure syndrome
- Hyperparathyroidism due to renal insufficiency
- Essential hypertension
- Gastroesophageal reflux disease without esophagitis
- Obstructive Sleep apnea
- Sciatica
- Arthroplasty, glenohumeral joint; total shoulder (glenoid and Proximal humeral replacement (eg, total shoulder)
- Ureteral stent implant
- Rapid heart beat
- Hyperlipidemia
- Seasonal allergy/rhinitis

(2) [REDACTED] University Medical Center for an evaluation of heart palpitations.

c. A letter of support from his pastor who has known the applicant for 23 years and describes him as a man of integrity.

3. A review of the applicant's service records show:

a. He enlisted in the Regular Army on 15 August 1978 for 3 years.

b. Court-martial charges were preferred against the applicant on 23 October 1978 for a violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL from 1 September 1978 until 20 October 1978.

c. On 25 October 1978, the applicant consulted with counsel and requested discharge for the good of the service under the provisions of Chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). 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 an under other than honorable conditions discharge; and the procedures and rights that were available to him. The applicant acknowledged:

- by submitting his request for discharge, he was guilty of the charge against him or of a lesser included offense therein contained which also authorized the imposition of a bad conduct or dishonorable discharge
- under no circumstance did he desire further rehabilitation for he had no desire to perform military service
- he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Discharge Certificate
- he may be deprived of many or all Army benefits
- he may be ineligible for many or all benefits administered by the VA

d. He was advised he could submit any statements he desired in his own behalf, which he elected to do. His personal statement indicates he joined the Army because he liked the idea of being in the Army. He had a job waiting for him when he got out of the Army. The reason for his discharge is because he would like out of the Army. He has a child he has not seen and a father he has not seen in over a year.

e. On 5 December 1978, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial for the good of the service. He directed an under other than honorable conditions characterization of service and reduction to private (PVT)/E-1, if applicable.

f. On 15 January 1979, the applicant was discharged accordingly. His DD Form 214 (Report of Separation from Active Duty) shows he completed 3 months and 12 days of active service with 49 days lost. He was discharged under the provisions of AR 635-200, Chapter 10, with an under other than honorable conditions characterization of service.

4. By regulation, a member who has committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other Than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

5. 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 evidence of post-service conduct the applicant provided insufficient to support clemency. 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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

3/4/2025

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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at that time provided that:

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 a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

c. Chapter 10 of that regulation provided, in pertinent part, 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, an under other than honorable conditions discharge was normally considered appropriate.

4. The Under Secretary of Defense for Personnel and Readiness issued guidance to DRBs and BCM/NR on 25 July 2018, 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 grounds.

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//