

IN THE CASE OF: ██████████

BOARD DATE: 7 February 2024

DOCKET NUMBER: AR20230007594

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (General), and an appearance before the Board.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Separation documents packet
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- U.S. Army Trial Defense Service (USATDS), Hawaii Field Office, Schofield Barracks, HI letter
- Resume
- Letter of Recommendation
- State ██████████, Division of Criminal Justice Services, ██████████ letter
- ██████████ College of Criminal Justice, City University ██████████
██████████ Certificate of Completion
- ██████████ Associate of Occupational Studies degree
- ██████████ Honor's List certificates (2)
- ██████████ Associate of Applied Science degree
- ██████████ Transcript
- ██████████ Honor's List certificates (3)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20090000621 on 21 April 2009.

2. The applicant states he requested a voluntary discharge from the Army on 5 August 1992 and received a discharge UOTHC. He believes he has served a sentence after he was discharged for a crime that never happened. Since his discharge, he has become a better man who has five children and has been trusted by various organizations to serve as an operations manager, human resources manager, and field manager, to name a

few. He is currently dedicating his life to four young men who want to follow in his footsteps by becoming Soldiers in the Army. He is requesting this correction because there was never a case; in fact, the charges were dropped. He was discriminated against and treated unfairly by his command. The company executive officer (XO) admitted to admitting him to a psychiatric ward against his will. He has served a 31-year sentence of having a discharge UOTHC in the civilian world.

3. The applicant's complete military service record is not available for review. This case is being considered based upon documents in the available record and those provided by the applicant.

4. The applicant enlisted in the Regular Army on 8 January 1991. Upon completion of initial entry training and the Basic Airborne course, he was assigned to a unit at Schofield Barracks, HI.

5. On 31 January 1992, the applicant underwent a pre-separation medical examination and was medically cleared for separation action.

6. Court-martial charges were preferred against the applicant. However, the relevant DD Form 458 (Charge Sheet) is not available for review.

7. The applicant consulted with legal counsel. He was informed of the charges against him for violation of the Uniform Code of Military Justice. He was advised of the rights available to him and of the option to request discharge for the good of the service - in lieu of trial by court-martial.

a. He voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, for the good of the service in lieu of trial by court-martial. By submitting his request for discharge, he acknowledged that he was guilty of the charges against him or of a lesser included offense therein contained, which also authorized the imposition of a bad conduct or dishonorable discharge. The applicant's request for discharge states he was not subjected to coercion with respect to his request for discharge.

b. He was advised that he might be:

- deprived of many or all Army benefits
- ineligible for many or all benefits administered by the Veterans Administration
- deprived of his rights and benefits as a veteran under both Federal and State laws; and he may expect to encounter substantial prejudice in civilian life because of a discharge UOTHC

c. He acknowledged he understood that, if his request for discharge was accepted, he might be discharged UO THC. He was also advised that he could submit statements in his own behalf.

d. In his statement he admitted to the charges of Absence Without Leave (AWOL), violation of a lawful order (having a female in the barracks), and false swearing. He further stated:

- he disobeyed his company commander's policy letter by having a female in his barracks room
- after being told he could spend the rest of his life in jail, he committed the offense of false swearing because he was afraid
- he went AWOL because he was confused
- he was the only Soldier handcuffed and arrested on 9 November 1991 and now he was the only one of the four Soldiers accused of rape
- he was not being charged with rape or any of the original offenses on the date in question

8. The applicant's Defense Counsel rendered USATDS, Hawaii Field Office, Schofield Barracks, HI, memorandum, Subject: Chapter 10 Request, [the applicant], dated 25 June 1992, wherein he requested the Commanding General (CG), 25th Infantry Division (Light), Schofield Barracks, HI, give favorable consideration of the applicant's request for discharge in lieu of court-martial under the provisions of Army Regulation 635-200, Chapter 10. The applicant was charged with Unauthorized Absence, False Swearing, Violating a General Regulation (female in the barracks), and Communicating a Threat.

a. The applicant was one of five Soldiers accused of raping a female in the barracks. The Soldiers had sexual intercourse with the female. An Article 32 investigation was initiated on one of the Soldiers but discontinued after approximately one hour. The applicant's Article 32 investigation did not begin until sometime later. Not one of the co-accused Soldiers was going to trial for rape. However, every Soldier was told they were being investigated for rape and that they may go to jail for life. The fact of the matter is that there was no rape. In fact, the alleged victim had since filed a similar claim at Pearl Harbor against Sailors with whom she had consensual sex.

b. The applicant was the only Soldier being court-martialed of the four Soldiers charged with rape. The applicant fully admitted that he was guilty of going AWOL, violating the barracks policy on female visitation, and false swearing in a written statement provided with counsel's memorandum.

c. Counsel asked the CG, in his capacity as the court-martial convening authority, to consider the offenses to which the applicant was admitting guilt all occurred after the

date of the alleged rape. Had he never been wrongfully accused of rape he would have never committed the other crimes, except for the policy of female visitors. Incidentally, it was another Soldier that brought the female into the barracks, and he was allowed to leave the Army with an Honorable discharge.

d. In addition to the above-mentioned incidents there was one more significant incident to be addressed. The applicant's company commander decided, while on leave, that the applicant was a threat to himself and other Soldiers and had him admitted to the Tripler Army Medical Center Psychiatric Ward. The reason for the admittance, according to the company XO, was to get the applicant out of their hair.

e. The applicant was not requesting an Honorable discharge; he was requesting a General discharge. The crimes he committed would only warrant a General discharge under the provisions of Chapter 14, Army Regulation 635-200. A discharge UOTHC would make starting life over again that much more difficult.

9. His chain of command recommended approval of his request for discharge with the issuance of an UOTHC discharge.

10. On 8 July 1992, the separation authority approved the applicant's request for discharge, and directed that he be reduced to the lowest enlisted grade with his service characterized as UOTHC.

11. The applicant's DD Form 214 confirms he was discharged on 5 August 1992, for the good of the service, under the provisions of Army Regulation 635-200, Chapter 10. His service was characterized as UOTHC. He was issued Separation Code "KFS", and Reentry Code "RE-3." He was credited with completion of 1 year, 6 months, and 28 days of net active service. He was awarded or authorized the National Defense Service Medal, Army Service Ribbon, Parachutist Badge, and two marksmanship qualification badges.

12. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. In doing so, he would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

13. The applicant petitioned the Army Discharge Review Board (ADRB) for relief. On 8 November 1996, the applicant was informed that after careful consideration, the ADRB had determined he was properly and equitably discharged and denied his request.

14. The applicant petitioned the ABCMR for relief. On 21 April 2009, the applicant was informed the Board had considered his application under procedures established by the Secretary of the Army and had denied his request for relief.

15. In addition to the previously discussed evidence, the applicant provides:

a. A USATDS, Hawaii Field Office, Schofield Barracks, HI letter, dated 17 March 1993, shows the applicant was discharged from the Army under the provisions of Army Regulation 635-200, Chapter 10, which is commonly referred to as a discharge for the good of the service.

b. The applicant's resume depicts his academic and professional achievements.

c. A letter rendered by the President and Chief Operating Officer of American Security Programs (A SecurAmerica Company) on 1 February 2021, shows he recommended the applicant for a position as an Operations Manager based upon his exceptional skills, professional experience, and personal qualities.

d. A letter rendered by an Associate Training Technician (Police) of the Office of Public Safety, State ██████████, Division of Criminal Justice Services, ██████████ dated 17 December 2003, shows the applicant met all applicable requirements to be certified as a General Topics Security Guard Instructor.

e. A ██████████ College of Criminal Justice, City University ██████████ certificate, dated 29 June 2005, shows the applicant successfully completed the Hi-Rise/Hotel Z50 Fire Safety Directors Course.

f. The ██████████ President and Faculty conferred the degree of Associate of Occupational Studies – Computer Network Operations on 28 September 2003.

g. Two ██████████ certificates show the applicant was named to the Honor's List in recognition of outstanding academic effort for Spring Term 2002 and Spring Term 2003.

h. ██████████ bestowed the degree of Associate of Applied Science – Business Administration on 1 August 2010.

i. ██████████ transcript shows he earned a cumulative grade point average of 3.15.

j. ██████████ certificates show he was named to the Honor's List for three separate quarters.

16. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition. By regulation,

an applicant is not entitled to a hearing before the Board. Hearings may be authorized by a panel of the Board or by the Director of the ABCMR.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is sufficient evidence to support re-issuing the applicant a DD Form 214 to show his characterization of service as honorable with a narrative reason for separation as Secretarial Authority. The Board found the applicant's unit failed him and his punishment was in equitable based on the evidence in the record.

2. The Board applauds the applicant's extremely noteworthy post service accomplishments and his character letters of support attesting to the applicant's integrity and character. Furthermore, the Board agreed there was a clear injustice and found upgrade of the applicant's discharge is warranted. As such, the Board granted relief, with an upgrade to honorable and his narrative reason for separation as Secretarial Authority.

3. The applicant's request for a personal appearance hearing 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 hearing is not necessary to serve the interest of equity and justice in this case.

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 is 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 re-issuing the applicant's DD Form 214 for the period ending 5 August 1992 showing his characterization of service as honorable with a narrative reason of Secretarial Authority.

2/22/2024

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 three 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 three-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. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. 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.
3. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was

authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

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//