

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 March 2024

DOCKET NUMBER: AR20230008585

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

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

- DD Form 149 (Application for Correction of Military Record), 10 May 2023
- self-authored statement, 10 May 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 15 June 1990
- certificate of birth, for [REDACTED]
- certificates, approximately 30, ranging from 1996 to 2024
- character references (nine)
- resume

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, his girlfriend was pregnant and did not have a place to stay. He felt compelled to remain with her to ensure she was supported during this time. He realizes his actions were not in accordance with military regulations; however, he is hoping the Board can understand the circumstances that led to his decisions.

a. Since leaving the military, he has worked hard to build a stable and productive life for his family and himself. He has held steady employment, pursued higher education, contributed to his community as a Police Officer, and now holds a position as a Criminal Investigator.

b. His discharge characterization has been an obstacle in his ability to secure certain types of employment and access certain benefits, he is requesting an upgrade to general, which would allow him to participate in civilian life fully and effectively.

3. The applicant enlisted in the Regular Army on 25 October 1988, for a period of 2 years and 15 weeks. He was awarded the military occupational specialty of 12C (Bridge Crewmember) and the highest rank he attained was Private First Class/E-3.
4. A DA Form 4187-E (Personnel Action) shows on 25 April 1990, the applicant surrendered to military authorities and was confined. His status was absent without leave (AWOL) since on or about 1 March 1990.
5. Court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL, from on or about 1 March 1990 until on or about 25 April 1990.
6. The applicant consulted with legal counsel on 1 May 1990, and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). He acknowledged his understanding of the following in his request:
 - a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.
 - b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to him.
 - c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected not to submit a statement in his own behalf.
7. On 15 May 1990, the applicant's immediate commander recommended approval of the requested discharge and further recommended the applicant be separated with a UOTHC characterization of service.
8. On 17 May 1990, the Chief of the Criminal Law Division reviewed the requested discharge and found no legal objections to further processing. However, the available record is void of the separation authority's approval.
9. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 15 June 1990, under the provisions of AR 635-200,

Chapter 10, for the good of the service – in lieu of court-martial, in the grade of E-1. His service was characterized as UOTHC with a separation code of JFW and reentry code of RE-3/3B/3-C. He was credited with 1 year, 5 months, and 27 days of net active service with time lost from 1 March 1990 to 24 April 1990.

10. The applicant provides:

- a. A certificate of birth, for a male named [REDACTED].
- b. Nine-character references, which summarize the applicant as professional, fair in his role as a police officer, honest, courteous, respectful, an outstanding worker, reliable, and a great leader in his professional and personal life.
- c. Two letters of appreciation, which thank the applicant for a job well done serving in two detention centers.
- d. Approximately 50 certificates varying from certificates of completion, achievement, training, graduation, appreciation, attendance, and awards.
- e. His resume, printed on 22 May 2023, showing his career in the Police and Criminal Field, showing his duties, accomplishments and related skills.

11. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service from the Soldier to avoid a trial by court-martial. An UOTHC character of service is normally considered proper.

12. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

BOARD DISCUSSION:

1. 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 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 record, the Board noted the applicant's stellar post service achievements and his numerous character letters of support attesting to his outstanding integrity, his professional character and honorable conduct.

However, the Board determined there is insufficient evidence of in-service mitigating factors for the misconduct to weigh a clemency determination.

2. The Board found the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 1 year, 5 months, and 27 days of net active service with time lost from 1 March 1990 to 24 April 1990. The Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a general under honorable conditions discharge. Therefore, the Board denied relief.

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.

3/19/2024

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 635-200, in effect at the time, provided guidance for the administrative separation of enlisted personnel:

a. Chapter 10 of this regulation provided a member who has committed an offense or offenses, the punishment for which, under the UCMJ and the Manual for Courts-Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the Service. The discharge request may be submitted after court-martial charges are preferred against the member, or, until final action on the case by the court-martial convening authority. A member who is-under a suspended sentence of a punitive discharge may also submit a request for discharge for the good of the Service. An UOTHC discharge certificate normally is appropriate for a member who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

3. 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. 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//