

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 December 2024

DOCKET NUMBER: AR20230010492

APPLICANT REQUESTS:

- an upgrade to his under other than honorable conditions (UOTHC) discharge to at least a general (under honorable conditions)

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

- DD Form 293 (Application for The Review of Discharge from The Armed Forces of The United States)
- DD Form 4 (Enlistment Contract-Armed Forces of The United States)
- DA Forms 2627-1 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ))
- DA Form 20 (Enlisted Qualification Record)
- DD Form 214 (Armed Forces of The United States Report of Transfer or Discharge)

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, he is requesting a review of his records, and an upgrade of his UOTHC discharge to at least a general. He does not feel that his UOTHC discharge, is a fair depiction of his service. He was responsible for payroll and several military vehicles and in just a few years, he managed to achieve the rank/grade of specialist (SPC)/E-4.
3. The applicant provides the following:
 - a. DD Form 4 which shows he enlisted in the Regular Army on 31 March 1971.

b. DA Forms 2627-1, reflect the applicant received the following non-judicial punishments under the provisions of Article 15, UCMJ:

(1) On 10 January 1972, did without authority fail to obey a lawful order of a noncommissioned officer (NCO), in that he failed to get out of bed. He was found guilty and received forfeitures of pay for \$20.00 for one month.

(2) On 7 May 1973, for behaving with disrespect toward his superior commissioned officer, by saying "God d*** it, why are you f***** with me", or words to that effect. He was found guilty. His punishment consisted of reduction to the grade of private (PV2)/E-2.

c. His DD Form 214 shows he was discharged on 24 October 1973, with an UOTH characterizations of service. He completed 2 years, 5 months, and 9 days of active service. He was awarded or authorized the National Defense Service Medal. His DD Form 214 also shows in:

- item 5a (Grade, Rate or Rank): private promotable (PVT)
- item 5b (Pay Grade) E-1
- item 11c (Reason and Authority): this section is blank
- item 30 (Remarks): 45 Days Lost Under Title 10, U.S. Code 972, 6 August 1973 through 19 September 1973

4. The applicant's service record is not available for the Board's review. The case is being reviewed by the Board based on the documents provided by the applicant.

5. The applicant did not apply to the Army Discharge Review Board for an upgrade of his characterization of service within that board's 15-year statute of limitations.

6. By regulation, a member who has committed an offense or offenses, the punishment for any of 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 discharge for the good of the service.

7. 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:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the pattern of misconduct leading to the applicant's separation, including the 45 days of lost time annotated on the applicant's DD Form 214, and the lack of mitigation for the misconduct, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

12/27/2024

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 (Armed Forces), 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 Army Board for Correction of Military Records (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 15-185 (ABCMR), currently in effect, 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

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 separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, MSO, or period for which called or ordered to active duty.

4. Army Regulation 635-5 (Personnel Separations - Separation Documents), in effect at the time, prescribes the separation documents which are prepared for individuals upon retirement, discharge, or release from active military service. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD, retirement, or discharge.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Boards for Correction of Military/Naval Records

on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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.

//NOTHING FOLLOWS//