

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 June 2024

DOCKET NUMBER: AR20230012125

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge from the U.S. Army Reserve (USAR) to honorable.

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

- DD Form 293 (Application from the Review of Discharge from the Armed Forces of the United States), 9 July 2023
- National Personnel Records Center (NPRC) correspondence, 26 July 2023 and 11 August 2023

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 while he was serving, his spouse became ill and he had to take care of her and his children, this was one of the reasons he was unable to perform his duties.

3. On 12 April 2004, the applicant enlisted into the USAR.

4. The applicant's service record is void of the complete facts and circumstances surrounding his discharge and his record does not contain a DD Form 214 (Certificate of Release or Discharge from Active Duty).

5. Orders 07-165-00042, issued by Headquarters, Army Reserve Medical Command, dated 14 June 2007, show he was discharged from the USAR effective 14 June 2007, under the authority of Army Regulation 135-178 (Army National Guard and Army Reserve - Enlisted Administrative Separations) with an under other than honorable conditions discharge. He was reduced in rank from specialist/E-4 to private/E-1 in accordance with Army Regulation 600-8-19 (Enlisted Promotions and Reductions) paragraph 10-15 (Other Reasons for Reduction).

6. Regulatory guidance states when the separation authority determines that a Soldier is to be discharged from the service under other than honorable conditions, the Soldier will be reduced to the lowest enlisted grade.

7. 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:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service and the unavailable separation proceedings. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned by the U.S. Army Reserve upon his discharge. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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.

7/1/2024

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. Army Regulation 135-178 sets forth the basic authority for the separation of enlisted Reserve Component personnel.

a. Paragraph 2-9a provides that an honorable characterization of service is appropriate when the quality of the Soldier'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. Paragraph 2-9b provides that a general (under honorable conditions) characterization of service is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

c. Paragraph 2-9c provides that an under other than honorable conditions (UOTHC) characterization of service is warranted when discharge is for misconduct, fraudulent entry, homosexual conduct, unsatisfactory participation, or security reasons.

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. 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//