

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 June 2024

DOCKET NUMBER: AR20230013030

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Character reference letters (four)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 his discharge should be upgraded because he is an upstanding citizen.
3. The applicant served in the Mississippi Army National Guard from 15 December 1999 to 4 June 2001, when he was honorably discharged for the purpose of enlisting in the Regular Army.
4. On 5 June 2001, the applicant enlisted in the Regular Army in the rank/grade of private first class/E-3 for a period of 3 years. Upon completion of initial entry training, he was assigned to a unit at Fort Stewart, GA. He was advanced to specialist/E-4 on 19 February 2003, the highest rank he held.
5. On 23 April 2002, the applicant's installation driving privileges were suspended indefinitely due to his driver's license being suspended by civil authorities.
6. DA Forms 4856 (Developmental Counseling Form) show the applicant was counseled on diverse occasions between 10 February and 19 June 2003. He was repeatedly advised that continued misconduct could result in punishment and or the initiation of administrative actions to have him separated from the Army and the

potential consequences associated with that type of separation. He was counseled for the following reasons:

- failing to go at the time prescribed to his appointed place of duty
- being absent from his appointed place of duty
- wrongfully driving on post while his post driving privileges were suspended
- physically controlling a passenger car while drunk
- refusing to take a blood alcohol content test
- stealing another soldier's license plate
- operating a motor vehicle on a highway without his driver's license in his immediate possession
- operating a motor vehicle while the tag light was defective
- operating a motor vehicle on a highway after placing stolen tags on his license plate
- failing to obey an order or regulation
- breaking restriction

7. A DD Form 458 (Charge Sheet) shows on 15 July 2003, court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ).

a. He was charged with:

- 16 specifications of failing to go at the time prescribed to his appointed place of duty
- violating a lawful general order by wrongfully driving on post while his post driving privileges were suspended
- physically controlling a passenger car while drunk
- stealing another soldier's license plate
- operating a motor vehicle on a highway without his driver's license in his immediate possession
- operating a motor vehicle while the tag light was defective
- operating a motor vehicle on a highway after placing stolen tags on the vehicle

b. The applicant's chain of command recommended that the charges be referred to a Special Court-Martial empowered to adjudge a Bad Conduct Discharge.

c. The Staff Judge Advocate (SJA) reviewed the charges, their specifications, and allied papers and concurred with the chain of command recommendations.

d. The separation authority approved the recommendation on 23 July 2003.

8. On or about 14 August 2003, the applicant conditionally requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, in lieu of trial by court-martial. He consulted with legal counsel and was advised of the basis for the trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a General, under honorable conditions discharge; and the procedures and rights that were available to him. He elected not to submit a statement in his own behalf.

a. On 15 August 2003, the applicant's chain of command recommended disapproval of the applicant's request because his offenses warranted a more significant punishment than the receipt of a General, under honorable conditions discharge.

b. The SJA agreed with the chain of command recommendations.

c. The separation authority disapproved the applicant's conditional request on 18 August 2003.

9. On or about 18 August 2003, the applicant 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. He consulted with legal counsel and was advised of the basis for the trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a discharge UOTHC; and the procedures and rights that were available to him. He elected not make an election regarding his right to submit statements in his own behalf.

10. On or about 18 August 2003, the applicant's chain of command recommended approval of his request for discharge with his service characterized as UOTHC. The SJA concurred with the recommendations.

11. On 18 August 2003, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He directed his service be characterized as UOTHC, and further directed that the applicant be reduced to the lowest enlisted grade.

12. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show the applicant was discharged on 10 September 2003, in the grade of E-1, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "In Lieu of Trial By Court-Martial" with Separation code "KFS" and Reentry code "4." He was credited with completing 2 years, 3 months, and 6 days of net active service this period. He did not complete his first full term of service.

13. The applicant provides four character reference letters which are available in their entirety for the Board's consideration. The authors of the letters made favorable

comments regarding the applicant's intelligence, motivation, wisdom, competence, work ethic, and personality.

- is a person of good moral character; he is responsible and self-resilient; he is of great character and an outstanding man
- efficient, detail-oriented, and extremely competent; he often successfully finished task well before deadline
- very organized and never missed a deadline or forgot an assignment; has an excellent rapport with people of all ages
- he has taken time out to read to both young children and the elderly; his excellent communication skills (both written and verbal) allow him to connect with all kinds of people and inspire them to put forth their best
- is one of our top professional drivers, he has demonstrated that he can be relied upon to be at work, on time and ready to perform his duties
- whether it be productivity or safety amongst our drivers he performs at or near the top. In addition, on several occasions

14. 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.

15. 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.

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 applicant was charged with commission of offenses (16 specifications of failing to go at the time prescribed to his appointed place of duty, wrongfully driving on post while his post driving privileges were suspended, physically controlling a passenger car while drunk, stealing another soldier's license plate, operating a motor vehicle on a highway without his driver's license in his immediate possession, operating a motor vehicle while the tag light was defective, and operating a motor vehicle on a highway after placing stolen tags on the vehicle) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. The

applicant provided letters of reference in support of a clemency determination. The Board thoroughly reviewed his submission and determined that the letters are not persuasive enough to overcome the misconduct. The authors do not address any post discharge significant achievements or accomplishments or the applicant's expression of remorse and ownership of his misconduct. Therefore, the Board determined the applicant's letters of reference are not persuasive enough to support of a clemency determination. Therefore, based on a preponderance of evidence, the Board determined that the character of service and reason for separation the applicant received upon separation were 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.

█

█

█

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, USC, 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//