

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 August 2024

DOCKET NUMBER: AR20230013389

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

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

- DD Form 149 (Application for Correction of Military Record)
- Orders 227-0015, Headquarters, 101st Airborne Division (Air Assault), Fort Campbell, KY, dated 14 August 2000
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 21 August 2000
- Certificates of Completion (5), dated 13 May 2021 to 30 November 2022

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 from the Army happened at a young age. Enough time has passed; he is not that young anymore. He would like to tell his children and family that he served under honorable conditions and have the honor of his service.
3. The applicant enlisted in the Regular Army on 16 September 1998.
4. Court-martial charges were preferred against the applicant on 7 May 2000 for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with:
 - behaving with disrespect towards his superior commissioned officer, on or about 27 June 2000, by refusing to go to the field
 - violating a lawful general order, between on or about 6 May 2000 and 7 May 2000, by visiting an off-limits establishment

- failing to obey a lawful order, on or about 27 June 2000 by not preparing to go to the field
- violating a lawful general regulation, on or about 7 May 2000 by wrongfully transporting a loaded, nongovernment-owned, 9mm handgun onto Fort Campbell
- making a false official statement, with the intent to deceive, on or about 27 June 2000, by stating his physician's assistant (PA) told him he did not need to go to the field
- unlawfully carrying a concealed weapon, a 9mm handgun, on or about 7 May 2000

5. A Military Police Report and associated documents, shows the applicant was apprehended, on 28 June 2000, for Larceny (Shoplifting). He was observed, via closed circuit camera, concealing an envelope of developed photographs in his back pocket and attempting to depart the Fort Campbell Main Exchange without rendering proper payment. He was detained, apprehended by military police (MP), and transported to the MP station. After being advised of his rights, he provided a statement, wherein he stated he put the envelope in his back pocket to look at clothes, not with the intention of stealing. He recalled his friend was waiting for him and left the store. He forgot he had the pictures in his pocket. The applicant was further processed and released to his unit.

6. The applicant consulted with legal counsel on 7 August 2000.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the UCMJ, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, in lieu of trial by court-martial, under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged understanding that by requesting discharge, he was admitting guilt to the charges against him, or of lesser included offenses that also authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged making this request free of coercion. He further acknowledged understanding that if his discharge request was approved, he could be deprived of many or all Army benefits, ineligible for many or all benefits administered by the Department of Veterans Affairs (VA) and deprived of his rights and benefits as a Veteran under both Federal and State laws.

c. He was advised that he may submit any statements he desired in his own behalf. His service record does not contain an additional statement.

7. The applicant's immediate and intermediate commanders recommended approval of his request for discharge, in lieu of trial by court-martial, and further recommended the issuance of a UOTHC discharge.

8. On 11 August 2000, the Staff Judge Advocate reviewed the applicant's request and recommended approval with the issuance of a UOTHHC discharge.

9. On that same date, the separation authority approved the applicant's request for discharge, directed the applicant be reduced to private/E-1, and the issuance of an UOTHHC discharge.

10. The applicant was discharged on 21 August 2000, under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. His DD Form 214 confirms his service was characterized as UOTHHC, with separation code KFS and reentry code RE-4. He was credited with 1 year, 10 months, and 18 days of active service. He had lost time from 4 August 2000 to 21 August 2000.

11. The applicant provides five Certificates of Completion from the U.S. Prison Terre Haute, dated 13 May 2021 to 30 November 2022, which show he has completed multiple courses in Resilience and Anger Management.

12. Administrative separations under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial. A UOTHHC characterization of service is normally considered appropriate.

13. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

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, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with behaving with disrespect towards his superior commissioned officer, violating a lawful general order, failing to obey a lawful order, violating a lawful general regulation, making a false official statement, with the intent to deceive, unlawfully carrying a concealed weapon, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was 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.

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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 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, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

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.

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.

//NOTHING FOLLOWS//