

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 August 2024

DOCKET NUMBER: AR20230014125

APPLICANT REQUESTS: his under other than honorable conditions (UOTHC) discharge be upgraded.

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

- DD Form 149 (Application for Correction of Military Record)
- Army Review Boards Agency (ARBA) Letter

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 he is seeking housing [REDACTED] but in order to obtain help he needs to be registered.
3. The applicant enlisted in the Regular Army on 5 July 1979. His military occupational specialty was 05C (Radio Operator).
4. The applicant served in Korea from 19 November 1979 through 30 September 1980.
5. A Criminal Investigation Division Report shows an investigation disclosed that on 20 July 1980, the applicant purchased video and television equipment at the Camp Red Cloud post exchange (PX) utilizing money provided by [REDACTED]. The applicant picked up the equipment on 26 July 1980 at the Yongsan PX and took it to an unknown location in Seoul, Korea. [REDACTED] gave the applicant \$300.00 for purchasing the items for him. [REDACTED] is not authorized to purchase or receive duty free goods.
6. The applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on 1 August 1980, for without authority going from his appointed place of duty on or about 21 July 1980 and was derelict in the performance of

his duties. His punishment consisted of reduction to private 2/E-2 (suspended), forfeiture \$127.89 (7 days' pay) and extra duty.

7. A Report of Medical Examination, dated 8 August 1980, shows the applicant was medically qualified for discharge.

8. The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing.

9. The applicant discharged on 1 October 1980. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for conduct triable by court-martial. His service was characterized as UOTHC. He completed 1 year, 2 months, and 27 days of net active service.

10. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he would have consulted with counsel and requested discharge under the provisions of Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

11. In reaching its determination, the Board can consider the applicant's petition and 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 short term of honorable service completed prior to the pattern of misconduct leading to the applicant's separation, 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.

2/13/2025

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, 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 sets forth the basic authority for the separation of enlisted personnel.
  - 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 Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

3. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018 [Wilkie Memorandum], 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 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.

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//