

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 July 2024

DOCKET NUMBER: AR20230014724

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general). Additionally, he requests an appearance before the Board via video/telephone.

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

DD Form 149 (Application for Correction of Military Record)

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 previously had the option to upgrade his status but due to his age and immaturity he neglected to complete the process. He is now working to correct this error. This is something that he should've prioritized when he was first discharged but didn't fully consider the lasting impact of having an UOTHC discharge status. As he has matured and reflected his lack of swift action has been a place of regret. There is no excuse on his delay, but he is seeking restoration in this area.
3. The applicant enlisted in the Regular Army on 26 October 1994 for 4 years. His military occupational specialty was 54B (Chemical Operation Specialist).
4. Military Police Report (MPR), dated 27 June 1995 shows the applicant was cited for drunk driving, drinking underage, and failure to stop at a posted stop sign. The report states that on 26 June 1995 the applicant failed to stop for a posted stop sign while leaving a parking lot. Military Policeman S\_\_ detected the odor of an alcoholic beverage emitting from the applicant and administered a field sobriety test, which he failed. The applicant was detained, read the implied consent law, transported to the MP station, and administered a breathalyzer test with a result of .080 grams. Further investigation revealed that the applicant was under the legal age to consume alcohol beverages and he was provided a suspension of installation driving privileges memorandum.

a. The alcohol report shows the effects of alcohol, pertaining to the applicant was obvious and the ability to drive was unfit.

b. The applicant's driving privileges were suspended on 28 June 1995. He acknowledged receipt of the suspension of driving privileges on the same date.

5. The applicant was counseled on 28 June 1995 for drunk driving and underage drinking.

6. The applicant received a General Officer Memorandum of Reprimand (GOMOR) on 14 July 1995 for the above offenses. He was reprimanded for misconduct. On 18 July 1995, the applicant read and understood the unfavorable information presented against him and elected not to make a statement.

7. On 19 July 1995, the applicant's unit conducted a urinalysis and the applicant's results were positive for tetrahydrocannabinol (THC).

8. The applicant was counseled on 25 July 1995 for his positive urinalysis.

9. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) in August 1995, for wrongful use of marijuana on or between 11 June 1995 and 11 July 1995. His punishment consisted of forfeiture of \$400.00 per month for two months, extra duty and restriction.

10. The Report of Mental Status Evaluation, dated 23 August 1995 shows the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible. He was evaluated in conjunction with the commander's request for mental status evaluation for Army Regulation (AR) 635-200 (Personnel Separation-Enlisted Personnel), Chapter 14-12, misconduct. Based on the evaluation, the applicant was psychiatrically cleared for any administrative action deemed necessary by command.

11. On 29 August 1995, the commander directed the GOMOR be filed in the applicant's Official Military Personnel File.

12. The applicant accepted NJP under Article 15 of the UCMJ in September 1995 for purchase and possession of an alcoholic beverage while being under the age of 21 on or about 26 June 1995; and for operating a vehicle while drunk on or about 28 June 1995. His punishment consisted of reduction to private/E-1, forfeiture of \$400.00 pay for two months (suspended), extra duty and restriction.

13. The applicant's immediate commander notified him on 17 September 1995, that he was initiating action to separate him under the provisions of AR 635-200, Chapter 14, for misconduct-commission of a serious offense. The reasons for the proposed action

were driving under the influence, drinking under the age of 21, and wrongful use of marijuana. His commander recommended he receive a UOTHC discharge.

14. The applicant consulted with legal counsel and was advised of the basis for his separation and the procedures and rights that were available to him. He waived a personal appearance before an administrative separation board and representation by counsel.

a. He acknowledged that he may expect to encounter substantial prejudice in civilian life, and he may be ineligible for any or all benefits as a veteran under both federal and State laws if discharged UOTHC.

b. He elected not to submit statements in his own behalf.

15. The applicant's immediate commander formally recommended the applicant be separated under the provisions of AR 635-200, Chapter 14, prior to his expiration term of service. His chain of command recommended an UOTHC discharge.

16. The separation authority approved the recommended discharge on 27 September 1995, and directed that the applicant be separated with a UOTHC discharge.

17. The applicant was discharged on 11 October 1995. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, Paragraph 14-12c (2), for misconduct with Separation Code JKK and Reentry Code 3. His service was characterized as UOTHC. He completed 11 months, and 16 days of net active service. His awards include the National Defense Service Medal, two Marksmanship Badges, and the Army Service Ribbon.

18. Soldiers are subject to separation under the provisions AR 635-200, Chapter 14, for misconduct. A discharge UOTHC is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the overall record.

19. 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:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the

petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct. The Board noted, although the applicant provided no post service accomplishments or character letters for the Board to weigh a clemency determination.

2. The Board determined under liberal consideration, the characterization of service the applicant received was harsh and more a pattern of misconduct verses a serious offense. The Board found the applicant accepts responsibility for his actions and was remorseful with his application, demonstrating he understands his actions were not that of all Soldiers. The Board agreed an under honorable conditions (general) character of service is warranted, as he did not meet the standards of acceptable conduct and performance of duty for Army personnel making him suitable for an Honorable characterization. Based on this, the Board granted relief to upgrade the applicant's characterization of service to under honorable conditions (general).

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by re-issuing the applicant's DD Form 214 for the period ending 11 October 1995, to show a characterization of under honorable conditions (general).

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. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.
  - a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
  - b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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. AR 635-200 (Personnel Separation-Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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.

c. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

4. 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, 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//