

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 August 2024

DOCKET NUMBER: AR20230014819

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

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

- DD Form 293 (Application for the Review of Discharge)
- Self-Authored Letter
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Character 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:

a. His service was abruptly ended due to a misconduct conviction by civilian court which lead to his UOTHC discharge. After incarceration he gave consideration to reenlistment but discovered that he could not because of the UOTHC discharge. From that moment until now, forty-three years ago, he has tried to treat that part of his life as if it never happened by not talking about it or thinking about it as little as possible.

b. He is 65 years old. He has worked at his job for 35 years. He is a team leader and manages floor operations. He is married with children and is a pastor.

3. The applicant enlisted in the Regular Army on 20 September 1978. His military occupation was 11B (Infantryman).

4. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 24 May 1979 for without authority, going from his guard post with intent to abandon the same on or about 18 May 1979. His punishment

included counselling about the consequences of his action. His immediate commander warned him about the penalties of another incident and advised him on the proper course of action.

5. DA Form 3975 (Military Police Report) shows the complaint of larceny of private property on 8 June 1979. The investigation revealed unknown persons forcibly gained entry to the applicant's wall locker, by beating the lock off and removed electronic equipment, estimated value unknown. The case was closed in the files pending receipt of any information which may lead to the identity of suspects or witnesses.

6. The applicant was counseled on 9 August 1979 for missing three formations. The counselor highly recommended the applicant be punished under UCMJ and sent to the correctional custody facility (CCF) for 14 days.

7. DA Form 3975 shows the complaint of aggravated assault (civil charge) on 9/10 August 1979. The investigation revealed that the applicant was apprehended for the above offense. The applicant was released to civil authorities on a warrant sworn for the above offense. The warrant was reviewed and approved by the Staff Judge Adjutant. Military Police, Fort Stewart, GA were notified, and a military detainer was filed. The applicant was being detained at the police department for pretrial confinement.

8. He was confined by civilian authorities on 15 August 1979 through 20 August 1979, and present for duty on 20 August 1979.

9. The applicant accepted NJP under Article 15 of the UCMJ on 24 August 1979 for assault of Private First Class/E-3 [REDACTED] by striking him with his fist on or about 9 August 1979 and wrongfully communicating a threat to injure him by means of assault on or about 9 August 1979. His punishment consisted of 30 days CCF, effective 30 August 1979, and \$233.00 per month for two months (suspended for two months). The punishment of 30 days CCF was mitigated to 17 days, extra duty, and restriction.

10. DA Form 4187 (Personnel Action) shows the applicant was picked up on 11 September 1979 for aggravated assault (civil) and placed in confinement at Liberty County Jail. He was tried on 26 October 1979 for aggravated assault and found guilty. The court sentenced him to 18 years in the penitentiary, to be followed by 2 years' probation, condition upon payment of a \$2,000.00 fine. He was now being held at [REDACTED] pending disposition. The applicant was pending discharge under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14, for misconduct.

11. The applicant's commander notified him that he was initiating action to discharge him from the service under the provisions of AR 635-200, Chapter 14, for misconduct conviction by civil court and recommended a UOTHC discharge.

12. The applicant acknowledged receipt of the notification on 6 November 1979.
13. The applicant refused to sign the Election of Rights.
14. The applicant's commander formally recommended his discharge on 26 December 1979. The applicant was convicted in civilian court of armed robbery and sentence to 20 years in the █A penitentiary. The chain of command recommended approval.
15. The applicant's Statement of Appeal, dated 29 April 1980 shows an intent to appeal had not been received by the county clerk's office of Liberty County.
16. A Request for Assistance on Election of Rights (AFZP FL 16) Certificate, dated 12 May 1980 shows the Army had tried several times to process the applicant for discharge under the provisions of AR 635-200, Chapter 14. The problem seems to be with getting the Election of Rights signed by the applicant.
17. A Walker Correctional Institution letter, dated 19 May 1980 shows the applicant had been requested to sign the document. He refused to sign stating that for him to sign any military papers a military official would have to be present.
18. The applicant's commanding officer recommended approval of the recommendation for elimination on 11 July 1980.
19. The separation authority approved the recommended discharge on 1 August 1980 and directed that the applicant be reduced to the lowest enlisted grade and furnished an UOTHC Discharge Certificate.
20. The applicant was discharged on 11 August 1980. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Section III, Chapter 14, for misconduct-conviction by civil court, with Separation Code JKB and Reenlistment Code RE-3B. His service was characterized as UOTHC. He completed 1 year and 18 days of net active service. He had lost time from 15 August 1979 to 19 August 1979 and 13 October 1979 to 11 August 1980.
21. 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.
22. The applicant provides:
  - a. A copy of his DD Form 214 as discussed above.

b. A character letter that attests to the applicant being a natural leader, and family man who completed studies becoming an ordained minister. He will admit his error and accept constructive criticism, seeks to improve, and will do his best to remedy the situation. He is disciplined, has integrity, and a great hear.

c. The character letter from his sister states he is a brother, father, son, husband, and spiritual leader. He is supportive and continues to be a guiding figure in their lives.

d. A character letter, which states the applicant is a pillar in the community and has demonstrated an unwavering love and a genuine caring heart for people, his family, and his ministry. He was an upstanding Soldier that served his country proudly.

e. A character letter, which states he helps keep the younger generation on the right path. He is an example of a great American and model citizen.

23. 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 misconduct leading to the applicant's separation involving some involving criminal activities, and the short term of honorable service completed prior to misconduct in the record, 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. 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.

3. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards (DRB) 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//