

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 August 2024

DOCKET NUMBER: AR20230015129

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

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

- DD Form 293 (Application for the Review of Discharge)
- Self-authored letter
- Character reference letters (3)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 an overcomer and has made positive efforts towards effective change. Moreover, he has graduated from college while working full-time and raising a son with limited support. The lessons he learned from positive and constructive feedback while in the Army have been very valuable in assisting him in making productive decisions since his discharge. More importantly, these moments have led him to a greater understanding and acknowledgement of his past mishaps. He asks for forgiveness for his mistakes. He has truly learned from the faults that he made as a young man, matured, and learned how to be a productive member of society.
3. On 21 October 2003, the applicant enlisted in the Regular Army, for 4 years. The highest grade he attained was E-3.
4. Court-martial charges were preferred against the applicant on 14 April 2006, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with two specifications of willfully disobeying a lawful order; one specification of assaulting a non-commissioned officer; one specification of assaulting a junior enlisted Soldier, one specification of committing an indecent assault

on a junior enlisted Soldier with intent to gratify his sexual desires; and one specification of being drunk and disorderly.

5. On 24 April 2006, the applicant consulted with legal counsel and 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 bad conduct discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 10, request for discharge in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding of the elements of the offenses charged, and he was admitting guilt to one or more of the specifications against him, or of a lesser included offense which also authorized the imposition of a bad conduct discharge. He further acknowledged he understood that if his discharge request was approved, he could be deprived of several Army benefits, he could be ineligible for some benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

b. He submitted a statement in his own behalf apologizing for all he had done that was not becoming of a good Soldier. He was sorry for all the trouble he caused his commander and non-commissioned officers, and especially sorry to the Soldiers for fighting them in the barracks. He had drank too much, and everything happened so quickly, that he didn't understand what the other Soldiers were doing. He was sorry for all of his poor choices that night.

6. The separation authority approved the applicant's request for discharge on 27 April 2006, and directed a UOTHC characterization of service and reduction in grade to E-1.

7. The applicant was discharged on 1 May 2006. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 2 years, 6 months, and 11 days of net active service this period.

8. Additionally his DD Form 214 shows he was awarded or authorized the Global War on Terrorism Service Medal and Korea Defense Medal.

9. The applicant provides three character reference letters that collectively attest to his humility, moral character, family values, and selfless service he provides others. These letters are provided in their entirety for the Board's review within the supporting documents.

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 consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, 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, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency 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 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. The Board noted the severity of the applicant's misconduct. Upon review of the applicant's petition and available military records, the Board found insufficient evidence of in-service mitigating factors to overcome the serious misconduct and the applicant provided no evidence of post-service achievements to weigh a clemency determination. Careful consideration was given the applicant's character letters of support that attested to his humility, moral character, family values, and selfless service he provides others. However, based upon a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust. Therefore, relief is denied.

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, U.S. Code, 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 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 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. 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//