

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 September 2024

DOCKET NUMBER: AR20240000924

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- 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 requesting an upgrade of his discharge because he did not embezzle any money and only agreed with the recommendation of counsel. Prior to entering the military, his record was excellent, and since leaving the military it has been excellent. He states he was not guilty and felt someone else was. He would be eternally grateful if the Army would take a look at the evidence and see who else had access to the money. His name is everything.
3. A review of the applicant's service record shows:
 - a. He enlisted in the U.S. Army Reserve on 28 August 1978 as a Cadet.
 - b. On 11 March 1985, the applicant consulted with legal counsel and voluntarily tendered his resignation from the Army for the good of the service under the provisions of chapter 5, AR 635-120 (Officer Resignations and Discharge – Personnel Separations) in lieu of trial by court-martial or a board of officers. He acknowledged:
 - he was afforded an opportunity to consult with counsel
 - he was afforded an opportunity to present matters

- if his request for resignation was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a Veteran under both Federal and State law
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading

c. A DD Form 458 (Charge Sheet) dated 22 March 1985, shows court-martial charges were preferred on the applicant for one specification of between 1 March 1984 and 30 June 1984 the applicant without proper authority, through neglect lost \$3,512.47, military property of the United States.

d. The chain of command recommended the approval of the applicant's request for resignation for the good of the service and he be issued an under other than honorable conditions discharge.

e. On 13 June 1985, consistent with the chain of command recommendations, the separation authority approved the applicant's request for resignation for the good of the service. He would be issued an under other than honorable conditions discharge.

f. Orders 158-8, dated 23 July 1985, discharged the applicant from the Army Reserve with an effective date of 5 August 1985.

g. On 5 August 1985, he was discharged from the Army Reserve with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 years, 1 month, and 16 days of active service. The narrative reason for separation listed as "Conduct Triable by Court-Martial." It also shows he was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. By regulation (AR 635-120), an officer whose conduct has rendered him triable court-martial for an offense punishable by dismissal may submit a resignation for the good of the service in lieu of trial. An officer who is under a suspended sentence of dismissal may likewise submit a resignation for the good of the service.

6. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the charge against him, the reason for his separation, and whether to apply clemency.
2. A majority of the Board found the applicant's character of service to be too harsh considering the non-violent and apparently unintentional nature of the offense with which he was charged that occurred while he was a junior officer. Based on a preponderance of the evidence, a majority of the Board determined the applicant's character of service should be changed to honorable.
3. The member in the minority found insufficient evidence of in-service mitigating factors and noted the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the member in the minority determined the character 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 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 reissuing his DD Form 214 to show his character of service as honorable.

2/26/2025

XCHAIRPERSON


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 635-5 (Separation Documents, in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.
3. Army Regulation 635-120 (Officer Resignations and Discharge – Personnel Separations) in effect at the time, sets forth the basic authority for the separation of officers.
 - a. Section V. (Resignation for Good of the Service” of this regulation states an officer whose conduct has rendered him triable court-martial, for an offense punishable by dismissal; may submit a resignation; for the good of the service in lieu of trial. An officer who is under a suspended sentence of dismissal may likewise submit a resignation for the-good of the service.
 - b. Paragraph 36a, states a resignation for the good of the service when approved in Headquarters, Department of the Army, normally will be accepted as under other than

honor able conditions, in which case the officer will be furnished Discharge: Certificate (Under Other Than Honorable Conditions) (DD Form 794A).

c. Paragraph 36b, states If it is determined in Headquarters, Department of the Army that the resignation should' be accepted under honorable conditions, the officer will be furnished an Honorable Discharge Certificate (DD Form 256A), or a General Discharge Certificate (Under Honorable Conditions) (DD Form 257A), as appropriate.

4. 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/NRs) 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.

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 based on equity, injustice, or clemency grounds, BCM/NRs 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//