

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 September 2024

DOCKET NUMBER: AR20240001149

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

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, 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 joined the Army on 16 June 1969, wanting to make a career out of serving in the Army. He made E-4 in ten months and had never been in trouble while in the Army. For over 50 plus years he has been bothered with the UOTHC discharge vice a general discharge. He called home and talked to his sister and was told his father was beating his mother which resulted in her being hospitalized. The Army would not allow him to go on leave to stop his father from hurting his mother. He believes following his enlistment in the Army is when his father began beating his mother. His father was a Staff Sergeant and served in the Army for 8-9 years. While serving in the Philippines, his father contracted tuberculosis (TB). His father was discharged and began to drink alcohol everyday thereafter. His nephew stole two tires, and six wrenches then told the police the items were given to him, and he gave his nephew a ride to sell the tires and wrenches. His nephew's lie made him an accessory and resulted in his civil conviction. He prays to God that he can be relieved of the UOTHC discharge and make it a general discharge.
3. The applicant provides a copy of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the service period ending 19 June 1972.
4. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 15 July 1969.

b. His DA Form 20 (Enlisted Qualification Record) shows in Item 44 (Time Lost), the below listed dates of being reported absent without leave (AWOL):

- 24 September 1970 - 29 December 1971
- 14 March 1971 - 28 June 1971
- 29 June 1971 - 19 June 1972

c. On 30 June 1971, the applicant was arrested and held for possible probation violation, for burglary when previously arrested on 28 December 1970.

b. The available service record is void of the separation processing surrounding the applicant's discharge.

e. On 19 June 1972, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 4 months and 23 days of active service with 926 days of lost time. The narrative reason for separation is listed as "Civil Conviction," in accordance with Army Regulation 635-206 (Personnel Separations – Discharge).

5. 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.

6. By regulation (AR 635-206), an individual will be considered for discharge when he has been initially convicted by civil authorities, or action taken against him which is tantamount to a finding of guilty, of an offense for which the maximum penalty under the Uniform Code of Military Justice is death or confinement in excess of 1 year. An individual discharged for conviction by civil court normally will be furnished an undesirable discharge certificate except that an honorable or general discharge certificate may be furnished if the individual being discharged has been awarded a personal decoration, or if warranted by the particular circumstances in a given case.

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

BOARD DISCUSSION:

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 (circumstances regarding the period of AWOL), his record of service, his bar to reenlistment, the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and 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 Board 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 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.

3/4/2025

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, 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 (Active Duty Enlisted Administrative Separations), currently in effect, sets forth the basic authority for the separation of enlisted personnel.
 - a. An honorable discharge is a separation with honor. 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
3. Army Regulation 635-206 (Personnel Separations – Discharge), in effect at the time, establishes policy and prescribes procedures for the elimination of enlisted personnel for misconduct by reason of fraudulent entry into the service, conviction by civil court, and absence without leave or desertion. An individual discharged for conviction by civil court normally will be furnished an undesirable discharge certificate except that an honorable or general discharge certificate may be furnished if the individual being discharged has been awarded a personal decoration, or if warranted by the particular circumstances in a given case. An individual will be considered for discharge when it is determined that one or more of the following apply:
 - a. Conviction by Civil Court. When he has been initially convicted by civil authorities, or action taken against him which is tantamount to a finding of guilty, of an offense for which the maximum penalty under the Uniform Code of Military Justice is death or confinement in excess of 1 year. If the offense is not listed in the Table of Maximum Punishments, Manual for Courts-Martial, or is not closely related to an offense listed therein, the maximum punishments authorized by the United States Code or the District of Columbia Code, whichever is lesser, will apply.
 - b. Conviction of offense involving moral turpitude. When initially convicted by civil authorities of an offense which involves moral turpitude, regardless of the sentence received or maximum punishment permissible under any code.

c. Adjudication as juvenile offender. When initially adjudged a juvenile offender for an offense involving moral turpitude.

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//