

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 October 2024

DOCKET NUMBER: AR20240001151

APPLICANT REQUESTS: upgrade of his under other than honorable conditions characterization of service.

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)
- NGB Form 22 (Report of Separation and Record of Service)

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 in 1984, he was 17 years old, homeless, emotionally unstable, and had a baby on the way. He had no support and basically was scared and trying to do life by himself. He failed at that time because he really did not understand what life was about. He had a lot of anxiety and was very immature; he was not dealing with life; he was running from life. This influenced him to leave the military to look for help with being a man and father. In doing so, he made bad decisions without ever thinking about the consequences of his decisions. He thought he was going to get an honorable discharge based off his situation. Now he is finding out on his DD Form 214 that it has "Other Than Honorable" but under Character of Service it notes "Under Honorable Conditions", which is confusing to him.
3. The applicant's service records are not available for review. An exhaustive search was conducted to locate his records, but they could not be found. However, the applicant provides sufficient documents for the Board to conduct an equitable and impartial evaluation of his case.

a. The applicant enlisted in [REDACTED] Army National Guard ([REDACTED] ARNG) on 14 November 1984. He was ordered to active duty for training to report on 28 January 1985. However, he did not report to active duty.

b. The applicant was reported absent without leave on 28 January 1985 and he was dropped from the rolls on or about 28 February 1985. He was reported present for duty on or about 17 July 1986.

c. The complete facts and circumstances surrounding his discharge are not available for review. However, his DD Form 214 shows:

(1) He was discharged from active duty on 15 September 1986 in accordance with chapter 10 (in lieu of trial by court-martial) of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) with an under other than honorable conditions characterization of service (Separation Code KFS and Reentry Code 3/3B/3C).

(2) He completed 1 month and 28 days of active service. He also had lost time from 28 January 1985 to 17 July 1986 and excess leave from 21 July to 15 September 1986.

d. His NGB Form 22, which was issued by the State ARNG and reflected his [REDACTED] ARNG, show she was discharged from the ARNG on 1 May 1985, with a general (under honorable conditions) character of service in accordance with National Guard Regulation 600-200 (Enlisted Personnel Management), and Section 94 of the State [REDACTED] Military Law.

(1) He completed 5 months and 18 days of ARNG service. He was transferred to the U.S. Army Reserve Control Group (Annual Training) with a terminal Reserve service obligation through 13 November 1992.

(2) He was not awarded an MOS (military occupational specialty).

4. There is no indication he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitation.

5. By regulation, AR 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial.

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. 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. Upon review of the applicant’s petition and available military records, the Board determined that there was insufficient evidence of in- service mitigating factors to warrant an upgrade of the applicant’s under other than honorable conditions (UOTHC) discharge.

2. The Board noted that the applicant was reported absent without leave (AWOL) on 28 January 1985 and subsequently dropped from the rolls on or about 28 February 1985. He did not return to military control until approximately 17 July 1986. Due to the absence of complete records detailing the circumstances surrounding his discharge, the Board relied on the information provided in the applicant’s DD Form 214. The applicant’s DD Form 214 reflects he was not awarded an MOS (military occupational specialty) and completed 1 month and 28 days of active service, with extensive lost time from 28 January 1985 to 17 July 1986 and excess leave from 21 July to 15 September 1986. The Board determined that the applicant did not provide post-service achievements or character letters of support that could substantiate rehabilitation or meritorious service after discharge. Given the nature of his misconduct, the lack of mitigating factors, and the absence of supporting documentation, the Board found no basis to upgrade his discharge. Based on the preponderance of evidence and applicable regulatory guidance, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

a. Paragraph 3-7a states that 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. Paragraph 3-7b states that 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.

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/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. 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. 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//