

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 October 2024

DOCKET NUMBER: AR20240002033

APPLICANT REQUESTS: Reconsideration of his request for upgrade of his under other than honorable conditions (UOTHC) discharge to honorable and a personal appearance before the Board.

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

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20100030545 on 7 July 2011.
2. The applicant states he was discharged for being bisexual. Being part of the lesbian, gay, bisexual, or transgender community has nothing to do with serving in the military.
3. On 7 March 1969, the applicant enlisted in the Regular Army for 3 years. His record shows he was not awarded a military occupational specialty.
4. On 4 June 1969, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 13 June 1969.
5. On 17 June 1969, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ), for going AWOL. His punishment included forfeiture of \$50.00 per month for two months and 20 days confinement.
6. On 24 June 1969, the applicant underwent a psychiatric evaluation. The attending psychiatrist diagnosed him with homosexuality and noted that the applicant's sexual practices were perverse; his manner was effeminate; and his career interests were vaguely "artistic" a manner characteristic of homosexuals. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

7. On 24 June 1969, the applicant was reported as AWOL a second time and remained absent until his apprehension by civil authorities on 30 July 1969.

8. Before a special court-martial on 31 July 1969, at Fort Meade, MD, the applicant was found guilty of two specifications of going AWOL. The court sentenced him to 30 days restriction and forfeiture of \$76.00 pay for one month. The sentence was approved on 4 August 1969, and the record of trial was forwarded for appellate review.

9. On 17 November 1969, the applicant was reported as AWOL a third time and remained absent until he returned to military authorities on 1 December 1969.

10. On 10 December 1969, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.

11. Court-martial charges were preferred against the applicant on 10 December 1969 for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL and one specification of escaping confinement in the post stockade on 17 November 1969.

12. The applicant consulted with legal counsel on 11 December 1969 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 an undesirable 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 – Enlisted Personnel), Chapter 10, for the good of the service in lieu of trial by court-martial. In his request for discharge, he acknowledged he understood that if his request for discharge was accepted, he may be discharged UOTHC. He understood that, as a result of the issuance of such a discharge, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State law.

b. The applicant declined to submit a statement in his own behalf.

13. On 15 December 1969, the applicant's commander recommended approval of the applicant's request for discharge with issuance of an Undesirable Discharge Certificate.

14. Consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge for the good of the service on 22 December 1969 and directed issuance of a DD Form 258A (Undesirable Discharge Certificate).

15. The applicant was discharged on 22 December 1969. His DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 7 months and 15 days of net active service this period with 61 days of lost time.

16. The applicant petitioned the ABCMR two times for consideration of his request for upgrade of his UOTHC discharge. On 7 July 2011, the Board voted to deny relief and determined that the overall merits of his case were insufficient as a basis for correction of the applicant's records. On 20 January 2012, the staff of the ABCMR reviewed his request for reconsideration and examined the original ABCMR decision. From that review, the ABCMR determined the applicant did not provide new evidence and/or argument with his request. As a result, his request for reconsideration was returned without action.

17. 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.

18. 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:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. 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 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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20100030545 on 7 July 2011.

4/1/2025

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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

c. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) 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//