

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 October 2024

DOCKET NUMBER: AR20240002377

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

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

- DD Form 293 (Application for the Review of Discharge or Dismissal from the Armed Forces of the United States) dated 4 December 2023
- DD Form 293, dated 29 October 1997
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 AR20200000091 on 23 July 2020.

2. The applicant states he was absent without leave (AWOL) from 15 November 1989 through 16 January 1990. He went AWOL due to his children being taken into custody by Child Young Services (CYS) due to his wife being admitted to the [REDACTED] [REDACTED] for a mental health disorder. He also underwent surgery and had a concussion. These issues were addressed by the Army Discharge Review Board (ADRB). The ADRB met in late 1998 in Washington D.C. He could not attend to produce evidence. At the time of discharge, he was twenty years old and had no assistance or support in aiding in his defense. He had two years of good service. He was not a deserter, conscientious objector, nor was he sentenced by court martial. Please review his personnel records and consider changing his character of discharge.

3. A review of the applicant's service record shows:

- a. He enlisted in the Regular Army on 23 September 1987.

b. On 12 August 1989, the applicant received a general officer letter of reprimand (LOR) from the Commander, 1st Cavalry Division, Fort Hood, TX. The applicant was reprimanded for driving while under the influence (DUI) of intoxicating liquor on 1 July 1989, with a blood alcohol content (BAC) of 0.16 percent, resulting in his arrest.

c. On 18 August 1989, the applicant submitted a letter of disposition, pleading the LOR be filed in his local file only.

d. On 25 January 1990, a DD Form 458 (Charge Sheet) shows court-martial charges were preferred on the applicant for one specification of being absent without leave (AWOL) from on or about 15 November 1989 until on or about 16 January 1990.

e. After consulting with legal counsel, he requested a discharge for the good of the service under the provisions of AR 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 10. He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge 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
- 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
- he may expect to encounter substantial prejudice in civilian life

f. On 4 April 1990, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge for the good of the service. He would be issued an under other than honorable conditions discharge and reduced to the lowest enlisted pay grade.

g. On 19 April 1990, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 2 years, 4 months, and 22 days of active service with 65 days of lost time. The narrative reason for separation was listed as "For the Good of Service-In Lieu of Court-Martial."

4. On 22 May 1998, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge and/or reason.

5. On 23 July 2020, the ABCMR rendered a decision in Docket Number AR20200000091. The Board found insufficient evidence of in-service mitigation to overcome the misconduct; the applicant provided no additional information pertaining to his claim. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust. His request was denied.

6. By regulation, an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

7. 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, supporting documents, 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.

2. A majority of the Board noted the nature of the applicant's misconduct and also noted his statement regarding the situation his family was in. The Board also considered his age at the time and found clemency is warranted. Based on a preponderance of the evidence a majority of the Board determined the applicant's character of service should be changed to under honorable conditions (general).

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:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial 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 under honorable conditions (general).
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an honorable character of service.

3/29/2025

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 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states 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. Paragraph 3-7b (General Discharge) states 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.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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.

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//