

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 October 2024

DOCKET NUMBER: AR20240002392

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) character of service to honorable and an appearance before the Board via video or telephone.

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 in the Spring of 1995, he was injured with a Grade 3 sprain and required crutches for three months. During a family day event, his commanding officer (CO) had him hit a lieutenant (LT) in the face with a pie for a charity event. The LT's nose started to bleed. He was constantly harassed by the LT and was in fear for his life. A week later, the CO gave him an order to participate in the battalion run despite still being on crutches. After that, he was put on 12 hour guard duty. He read an article about mistreatment of Soldiers at Fort Campbell. He tried to transfer, but his request was ignored. He continued to fear for his life. He went home on leave and did not return.
3. The applicant enlisted in the Regular Army on 18 November 1996 for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 11B (Infantryman). The highest rank he attained was private/E-2.
4. The applicant was reported as absent without leave (AWOL) on 15 July 1997 and was subsequently dropped from the rolls on 15 August 1997.
5. He was apprehended by civilian authorities on 21 December 1997 and was returned to military control on that same date.

6. Court-martial charges were preferred against the applicant for a violation of the Uniform Code of Military Justice (UCMJ) on 6 January 1998. The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL, from on or about 15 July 1997 until on or about 21 December 1997.

7. The applicant consulted legal counsel on 6 January 1998.

a. He 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 UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, in lieu of trial by court-martial, under the provision of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged his understanding that by requesting a discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged making this request free of coercion. He further acknowledged understanding that if his discharge request were approved, 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 laws.

c. He was advised he could submit any statements he desired in his behalf. He elected not to submit a statement.

8. The applicant's commander recommended approval of the requested discharge on 19 March 1998 and further recommended the applicant be separated with a UOTHC discharge.

9. On 26 March 1998, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial and further directed he be reduced to the lowest enlisted grade and the issuance of an UOTHC discharge.

10. The applicant was discharged on 28 April 1998, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his service was characterized as UOTHC, with separation code KFS and reentry code RE-3. He completed 1 year and 2 days of net active service, with lost time from 15 July 1997 to 20 December 1997. He was awarded or authorized the Army Service Ribbon.

11. Administrative separations under the provisions of Army Regulation 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of a

trial by court-martial. An UOTHC character of service is normally considered appropriate.

12. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination 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 the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

3/31/2025

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 Army Board for Correction of Military Records (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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides 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.
3. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
  - a. 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. 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.
  - b. 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.

c. 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.

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.

//NOTHING FOLLOWS//