

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 September 2024

DOCKET NUMBER: AR20240002771

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

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

DD Form 149 (Application for Correction of Military Record), 29 November 2023

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 effect, he had an emergency in his family. His grandmother who raised him was on life support and dying, and he wanted to see her before she passed. His Company Commander would not allow him to take leave and that caused him to go absent without leave (AWOL). He never wanted to leave the Army and was planning to make it his career. He believes had his Commander shown compassion he would have been able to take leave to see his grandmother and he would have never gone AWOL. He apologizes for going AWOL and he prays for forgiveness and humbly requests an upgrade of his characterization of service to be accepted by the military.
3. The applicant enlisted in the Regular Army on 17 June 2004 for a period of 3 years and 22 weeks.
4. Two DA Forms 4187 (Personnel Action) show the applicant's duty status changed from present for duty to AWOL effective on 16 October 2004 and from AWOL to dropped from rolls effective on 15 November 2004.
5. A DD Form 616 (Report of Return of Absentee) shows the applicant was returned to military authorities on 9 December 2004. He was apprehended by civilian authorities and had been AWOL since 16 October 2004.

6. Court-martial charges were preferred against the applicant on 16 December 2004 for violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 16 October 2004 and remained AWOL until on or about 9 December 2004.

7. The applicant consulted with legal counsel on 17 December 2004 and executed a written request for discharge in lieu of trial by court martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 10 (Discharge in Lieu of Trial by Court-Martial). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge in lieu of trial by courts-martial because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected to not submit a statement in his behalf and understood he may encounter substantial prejudice in civilian life.

8. On 17 March 2005, the applicant's immediate commander recommended approval of his request for separation under the provisions of AR 635-200, Chapter 10. Additionally stating the applicant was charged with one specification of AWOL totaling 58 days and he was apprehended by civilian authorities.

9. On 24 March 2005, the Staff Judge Advocate found no legal objections to the applicant's request for discharge. On 28 March 2005, the separation authority approved the requested discharge and directed he receive an UOTHC characterization of service.

10. The applicant was discharged on 20 April 2005, under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial, in the grade of E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his character of service was UOTHC. He was credited with 8 months and 10 days of net active service, with lost time from 16 October 2004 to 8 December 2004.

11. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

12. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

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, 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.

3/6/2025

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 – Active Duty Enlisted Administrative Separations), in effect at the time, provided guidance for the administrative 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 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. Paragraph 3-7a provides 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.

c. Paragraph 3-7b provides 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/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.

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 on the basis of 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//