

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 October 2024

DOCKET NUMBER: AR20240003272

APPLICANT REQUESTS: Reconsideration of his request for upgrade of his under other than honorable conditions (UOTHC) discharge 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 AR20150011755 on 2 August 2016.
2. The applicant states out of the group of Soldiers involved in the bar altercation; he was the only Soldier prosecuted. The other Soldiers chose to fight the charges and remained in the military. He was not given the opportunity to contest his treatment and was strongly encouraged to sign the administrative discharge paperwork. He was a young man and believed that his chain of command was looking out for his best interests. In hindsight he realizes that was not the case.
3. On 17 June 1999, the applicant enlisted in the Regular Army for 3 years. Upon completion of training, he was awarded the military occupational specialty 92Y (Unit Supply Specialist). The highest grade he attained was E-4.
4. A Criminal Investigation Division (CID) report of investigation (ROI) established probable cause to believe the applicant committed the offenses of assault and aggravated assault when he was involved in a physical altercation with another Soldier, on 1 July 2001.
5. A CID ROI established probable cause to believe the applicant committed the offenses of rape, housebreaking and conspiracy, on 6 September 2001, while in the Republic of Korea.

6. Court-martial charges were preferred against the applicant on 24 September 2001, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of committing assault upon a Soldier, by stabbing him in the abdomen with a knife, on or about 1 July 2001; and one specification of rape, on or about 6 September 2001.

7. On 23 January 2002, the applicant consulted with legal counsel 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 a bad conduct 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, request for discharge in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to one of the charges against him, or at least one of the lesser included offenses which also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was 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.

b. He declined to submit a statement in his own behalf.

8. On 12 February 2002, the applicant accepted non-judicial punishment under Article 15 of the UCMJ, for committing assault upon a Soldier, by stabbing him in the abdomen with a dangerous weapon, on or about 1 July 2001. His punishment included reduction to E-3, forfeiture of \$717.00 per month for two months, and 45 days restriction and extra duty.

9. The separation authority approved the applicant's request for discharge on 15 February 2002 and directed a UOTHC characterization of service and his reduction to the lowest enlisted grade.

10. The applicant was discharged on 26 February 2002. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 2 years, 8 months, and 10 days of net active service this period.

11. The applicant petitioned the Army Discharge Review Board (ADRB) requesting upgrade of his UOTHC discharge. On 2 February 2005, the Board voted to deny relief and determined his discharge was both proper and equitable.

12. The applicant petitioned the ADRB a second time, requesting upgrade of his UOTHC discharge. On 23 August 2010, the Board voted to deny relief and determined his discharge was both proper and equitable.

13. The applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 2 August 2016, the Board voted to deny relief and determined the overall merits of this case are insufficient as a basis for correction of the applicant's records.

14. 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.

15. 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. After reviewing the application, all supporting documents, the evidence found within the military record, and published DoD guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's statement, his military service record, the frequency and nature of his misconduct, his request for discharge in lieu of court-martial and the character of service he received upon separation. The Board found insufficient evidence of in-service mitigating factors in the record to overcome the misconduct. The applicant did not provide evidence of post-service achievements or letters of reference to support the Board's consideration of a clemency determination. Based on a preponderance of evidence, the Board determined that the applicant's character of service was not in error or unjust.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

█

█ █

█

█

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//