

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 November 2024

DOCKET NUMBER: AR20240003447

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his character 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), 3 January 2024
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 3 January 2024
- self-authored statement to the Department of Veterans Affairs (VA), 18 September 2023
- character reference statement, from S.P., 21 August 2023
- character reference statement, from G.I.K., 21 August 2023
- character reference statement, from J.M.B., 22 August 2023
- character reference statement, from Y.S., 5 January 2024

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 AR20120011610 on 23 January 2013.

2. The applicant refers to his written statement to the VA, dated 18 September 2023, stating in effect, he had difficulty processing the events that led to his UOTHC discharge, but he realizes that the events were in part due to his lack of experience and having no understanding of legal proceedings and how they impact one's life.

a. His UOTHC discharge, was the result of a toxic relationship with his significant other at the time, they were both in their early 20's. He departed the relationship and began to date someone else, which resulted in his former partner making several false reports to the police that he was physically violent towards her. The claims of domestic violence resulted in him being incarcerated for a short time, he believes while looking back this incident could have been avoided by having legal counsel available and by him not taking a plea bargain to lessen his time in jail. However, because he was not

financially able to get an attorney at the time, nor did he understand the importance of having one, the situation resulted in an UOTHC discharge being issued to him. He believes his commanding officer was bias in the situation and would not allow him to explain his perspective of the situation.

b. Having the UOTHC discharge has been something of a source of regret over the years. He has been determined to live an honorable life, which has included his marriage of over 24 years, parenting with his spouse three children who are now adults, being an active role in his adult children's lives while he and his spouse have seven grandchildren and maintaining his employment after his discharge from the military. He accredits these accomplishments to his service in the military because he learned self-discipline and determination.

3. The applicant enlisted in the Regular Army on 31 August 1989, for a period of 5 years. He was awarded the military occupational specialty of 62B (Construction Equipment Repairer). The highest rank he attained was specialist four/E-4.

4. The applicant accepted two non-judicial punishments, under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ):

a. On 9 September 1991, for failing to go to his prescribed appointed place of duty on or about 7 August 1991 and on or about 11 August 1991. His punishment imposed was reduction to the grade of E-2 and extra duty for 14 days.

b. On 3 June 1993, for disobeying a lawful command from his superior commissioned officer on or about 21 June 1993 and for failing to go to his appointed place of duty on or about 21 June 1993. His punishment imposed was reduction to the grade of E-3, forfeiture of \$213.00 pay per month for one-month, extra duty for 14 days, and restriction for 14 days.

5. On 17 August 1993, the applicant's immediate commander notified the applicant of the intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12c, for Commission of a Serious Offense. The commander noted the specific reasoning were assault and disobeying a lawful command given by a noncommissioned officer and further recommended the applicant receive an UOTHC discharge.

6. On the same date, the applicant acknowledged receipt of the notification for separation and consulted with counsel. He was advised of the basis for the contemplated action to separate him and of the rights available to him. He requested a personal appearance and consulting counsel before an administrative separation board. He further understood he may encounter prejudice in civilian life if an under honorable

conditions (general) discharge was issued to him and elected to not submit a statement in his own behalf.

7. On 23 August 1993, the applicant's immediate commander formally recommended his separation, under the provisions of AR 635-200, paragraph 14-12c. His intermediate commander's recommended approval of his separation with issuance of an UOTHC discharge.

8. On 28 September 1993, the separation authority directed the board members determine whether the applicant should be discharged for commission of a serious offense. On 13 October 1993, the applicant waived consideration of his case by an administrative separation board.

9. The staff judge advocate determined the applicant's separation was legally sufficient and on 19 October 1993 the separation authority approved the applicant's separation under the provisions of AR 635-200, 14-12c, with issuance of an UOTHC discharge and further directed the applicant be reduced to the lowest enlisted grade.

10. The applicant was discharged on 2 November 1993, under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct, in the grade of E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he received a character of service of UOTHC, with separation code JKQ, and reentry code of 4. He was credited with 4 years, 2 months, and 2 days of net active service with no time lost. He was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

- Army Service Ribbon
- Army Good Conduct Medal
- National Defense Service Medal
- Driver and Mechanic Badge with W Bar
- Marksmanship Badge (Rifle M16)
- Sharpshooter Badge (Hand Grenade)

11. On 22 January 2013, the ABCMR denied his request for discharge upgrade, stating his service records did not indicate the actions taken in his case were in error or unjust, therefore the ABCMR determined there were no basis for granting his request for an upgrade of his UOTHC discharge.

12. The applicant additionally provides four-character reference statements:

a. From S.P., the applicant's spouse, who summarized the applicant as a great stepfather and grandfather, a man who loves and cherishes his family. He was and is a hard worker, honest and dedicated worker. He has kept his employment for over 12

years now as a valued team member and is someone who is willing to help others when he can. She is grateful to have her spouse, the applicant, in her life as a husband, father to their children, and a friend.

b. From G.I.K., a family friend of the applicant, who summarized the applicant as a hard dedicated worker, a role model for those working under him, who attended work regularly and always presentable. He is a dedicated husband, who strives to work hard to take care and provide for his family, as well as others.

c. From J.M.B., his manager from his employment, who summarized the applicant as an employee who does an amazing job in his positions as salesperson, a worker who is able to help customers with their automotive sales and establishes long term relationships with clients. He has grown in his position, and his clients come back to him for their personal and family transportation needs because they know they can trust him.

d. From Y.S., a coworker of the applicant, who summarized him as reliable, supportive of coworkers and customers, he handles negative situations both professionally and respectfully. He conducts himself professional, respectful, easily engaged, and reliable in work and outside of his work setting and has a great deal of integrity and professionally as a team player and a husband, father, grandfather, and an upstanding member of his community.

13. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200, Chapter 14, for misconduct, an UOTHC characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

14. 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:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's request and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the pattern of

misconduct. The Board weighed heavily the applicant's periods of honorable service, and applauds his post service achievements and numerous character letters of support attesting to his integrity, 24 years of commitment to his family, and community engagement over the past decades.

2. While the Board noted the applicant's post service achievements, that alone is not a mitigatable basis for changing a characterization of service. The Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a general under honorable conditions discharge. Therefore, the Board found reversal of the previous Board determination is without merit and denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20120011610 on 23 January 2013.

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

2. 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, Boards 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//