

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 December 2024

DOCKET NUMBER: AR20240003741

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

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

- DD Form 149 (Application for Correction of Military Record), 20 February 2024
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim), 20 February 2024

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:

a. A VA representative was looking at his paperwork, due to the dismissal of the charges, he was told to apply for an upgrade of his discharge. He had two charges against him, he was found innocent of the two charges but was guilty of a lesser charge of consensual sodomy, which was overturned due to his discharge for the good of the service.

b. He joined the Army because he had a love for his country, he wanted to serve and make the Army his career, potentially become a warrant officer. However, because of the situation he was unable to complete serving. He served a total of 3 years and 2 months. He is remorseful of his discharge and has been heartbroken about the outcome for everyone who was involved. He requests the Board consider upgrading his discharge to change the injustice of the UOTHC discharge.

3. The applicant enlisted in the Regular Army on 12 January 2000, for a 6-year period. He was awarded the military occupational specialty of 67T (Helicopter Repairer). The highest rank he attained was private/E-2.

4. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ). However, the DD Form 458 (Charge Sheet) is not available for review.
5. The Result of Trial states: by General Court-Martial on 23 December 2002, 29 and 30 January 2003, at Fort Hood, Texas convened by court-martial convening order Number 13, dated 28 October 2002, as amended by court-martial convening order Number 2, dated 28 January 2003 found the applicant guilty of a lesser offense of consensual sodomy. He was sentenced to reduction to the grade of E-1, forfeiture of all pay and allowances, confinement for 6 months, and to be discharged with a dishonorable discharge. The sentence was adjudged on 30 January 2003.
6. The result of trial was forwarded for appellate review; however, it is not present in the available record.
7. The limited record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing.
8. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 19 March 2003, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10, in lieu of trial by court-martial, in the grade of E-1. His characterization of service was under other than honorable conditions, with separation code KFS, and reentry code of 4. He completed 3 years, 1 month, and 2 days of active service with time lost from 30 January 2003 to 6 March 2003. He was awarded or authorized the Army Service Ribbon and Basic Aviation Badge.
9. The issuance of a discharge under the provisions of Army Regulation 635-200, Chapter 10, required the applicant to have requested from the Army, voluntarily, willingly, and in writing, a discharge in lieu of trial by court-martial. It is presumed that all requirements of law and regulation were met, and the rights of the applicant were fully protected throughout the separation process. No evidence to the contrary has been provided.
10. 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:

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with an offense punishable under the Uniform Code of Military Justice with a punitive discharge. After his trial, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. Based on a preponderance of the evidence, the Board concluded that the characterization 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.

3/26/2025

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//