

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 November 2024

DOCKET NUMBER: AR20240003835

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to general under honorable conditions.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Summary of Proceedings
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 he is requesting that his discharge be upgraded to general, under honorable conditions. He was young and had never been in trouble before. This was first time away from home and he was very excited about his new life in the military. He was away from home and under a tremendous amount pressure to be successful in life. As a result, his careless and stupid mistakes caused him to suffer tremendously both mentally and professionally. He believes he was falsely accused of something he did not do. He was afraid of being court-martial and not really understanding uniform code of military justice (UCMJ). He felt he was manipulated to take the chapter 10 discharge. He is aware he signed the requested for discharged for the good of the service. However, he really did not understand what was at stake. Since his discharge his self-worth and self-esteem has been in shambles, He also has mental issues because of what he was accepted back then. In addition, there were witnesses that gave sworn statements that contradicted the accuser's testimony. It was two consenting adults involved and the accuser kept changing her story. He notes he cannot right the wrong. However, he continues to pay for the mistake mentally, morally, and personally for the last 20 years. After being refused veterans benefits, he took a long hard look at

his military files and discharge. He is requesting to please take his request into consideration and refer to the enclosed document for further information and clarification.

3. The applicant provided the following information:

a. A summary of proceedings dated 23 November 1993 that provides the testimony of what witnesses recalls happened on 23 October 1993.

b. A copy of his DD Form 214 that shows his record of service.

4. A review of the applicant's service record shows:

a. He enlisted in the Georgia Army National Guard and enter Active Duty on 2 August 1993.

b. The available service record is void the official investigative documents, details and circumstances surrounding the events that occurred on 23 October 1993.

c. A copy of a handwritten letter from S___ H___, requesting the incident that occurred on 23 October 1993 be handled out of court.

d. A copy of a promissory note in pursuant to rule for Courts-Martial 409, and in consideration of medical expenses which resulted from the incident that occurred on 23 October 1993. The applicant promised to pay the sum of \$879.00 to S___ H___, a partial payment of medical expenses that resulted from the incident on 23 October 1993. The applicant signed on 6 December 1993.

e. On 6 December 1993, the applicant provided a receipt for \$300.00 a partial installment payment for medical expenses paid to S___ H___ as per the promissory note.

f. The applicant wrote a letter of apology to S___ H___ expressing his regret, any inconvenience, or burdens that may have resulted from the events of the 23 October 1993.

g. On 7 December 1993, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense

- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life

h. He submitted a statement to the separation authority on his own behalf which stated:

- he requested the approval of chapter 10 discharge
- he already paid a portion of S___ H___ medical expense (\$300.00)
- he made arrangements to pay the remaining portion
- he provided an apology to S___ H___

i. On 10 January 1994, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge for the good of the service. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

j. On 14 January 1994, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 5 months and 13 days of active service with no lost time. He was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial," with reentry code 3. It also shows he was awarded or authorized the Army Service Ribbon.

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

6. By regulation, an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

7. The Criminal Investigation Division (CID) conducted a search of the Army criminal files indexes and no sexual assault records, criminal investigative and military police reports were indexed pertaining to the applicant.

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 misconduct. The Board noted the applicant provided insufficient evidence of post-service achievements or character letters of support that attest to his post honorable conduct that might have mitigated the misconduct that resulted in the discharge characterization.

2. 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 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 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. 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 – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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. Paragraph 3-7b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service.

An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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/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.

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 based on 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//