

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2025

DOCKET NUMBER: AR20240003896

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

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

- DD Form 149 (Application for Correction of Military Record), date
- DD Form 214 (Report of Separation from Active Duty), 22 December 1977
- Correspondence to the Veterans Affairs, from [REDACTED] 28 February 1978
- Administrative Decision, 22 May 1978
- Department of Veterans Affairs Eligibility Determination for Character of Discharge Request Form, 6 September 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 after he received an UOTHC discharge he went in front of a committee with Senator Frank Church along with his mother, he was informed his discharge was found honorable for Department of Veterans Affairs purposes, he was additionally able to use his GI Bill benefits. He has recently discovered his DD Form 214 was not updated and wants it updated to reflect honorable.
3. A review of the applicant's service record shows the following:
 - a. He enlisted in the Regular Army on 22 April 1976, for a 3-year period.
 - b. He received non-judicial punishment on:
 - 15 December 1976, for on or about 5 December 1976, sleeping on his post

- 22 November 1977, for on or about 20 November 1977, failing to sign his off duty pass at the prescribed time
- 12 December 1977, for on or about 8 December 1977, failing to obey a lawful order by failing to sign in from his pass at the time prescribed

c. On 30 November 1977, he was found guilty by a special court-martial of two specifications of absenting himself without authority from his organization, from on or about 7 June 1977 and remaining absent until on or about 15 July 1977 and from on or about 19 July 1977 and remaining absent until on or about 2 August 1977. The court sentenced him to confinement at hard labor for 45 days and forfeiture of \$100.00 pay per month for one month.

d. The appellate review and Special Court-Martial Order showing his sentence was affirmed and ordered to be duly executed is not available for review.

e. The applicant was discharged on 22 December 1977, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 13-5a(1) (Separation for Unfitness or Unsuitability – Unfitness – Frequent Incidents of a Discreditable Nature with Civil or Military Authorities). His service was characterized as UOTHC and he completed 1 year, 6 months, and 4 days of net active service this period with 57 days' lost time.

4. The applicant additionally provides his administrative decision from the Veterans Administration Regional Office, dated 22 May 1978 showing they concluded his discharge was under honorable conditions for Veterans Administration purposes. His father wrote on his behalf describing in detail the applicant's time in service and requesting an upgrade of his discharge. Additionally, his most recent request for eligibility determination for character of discharge request form.

5. 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 petition and available military records, the Board determined that

insufficient evidence exists to support in-service mitigating factors that would warrant relief from the misconduct of absence without leave (AWOL) while stationed in Germany.

2. Additionally, the Board noted that the applicant did not provide post-service achievements or character letters for consideration in a clemency determination. Given the lack of evidence supporting an error or injustice, the Board concluded that the applicant has not demonstrated by a preponderance of evidence a basis for upgrading his under other than honorable conditions (UOTHC) discharge to honorable. Based on this, relief is denied.

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 (AR) 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 and entitles the recipient to benefits provided 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. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

d. Chapter 13 established policy and provided procedures and guidelines for eliminating enlisted personnel found to be unfit or unsuitable for further military service. Paragraph 13-5a (1) (Unfitness), states, an individual is subject to separation under the provisions of this chapter for unfitness for frequent incidents of a discreditable nature with civil or military authorities.

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//