

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 October 2024

DOCKET NUMBER: AR20240004405

APPLICANT REQUESTS: an upgrade of his characterization 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)

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 when he signed up his contract stated he had a choice of a duty station, but when he finished basic combat training, he was told he would be going to Fort Campbell instead of Hawaii. He feels this was a breach of contract and his discharge should be upgraded from UOTHC to honorable.
3. The applicant enlisted in the Regular Army on 1 October 1999 for a period of 3 years. The highest rank he attained was private/E-1.
4. A DA Form 3286-64 (Statement for Enlistment United States Army Station/Unit/Command/Area Enlistment Program) shows on 1 October 1999 the applicant acknowledge he was assured after successful completion of all required training he would receive an initial assignment to Fort Campbell, Kentucky.
5. Two DA Forms 4187 (Personnel Action) from Fort Campbell, Kentucky, show the applicant's duty status changed from present for duty to absent without leave (AWOL) effective 20 April 2000 and from AWOL to dropped from rolls effective 20 May 2000.
6. A DD Form 616 (Report of Return of Absentee) shows the applicant surrendered and returned to military control effective 25 October 2000.

7. Court-martial charges were preferred against the applicant on 31 October 2000 for violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWO, from on or about 20 April 2000 and remaining AWOL until on or about 22 October 2000.

8. The applicant consulted with legal counsel on 31 October 2000 and executed a written request for discharge in lieu of trial by court martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10 (Discharge in Lieu of Trial by Court-Martial). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge in lieu of trial by court-martial because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected to not submit a statement in his behalf and understood he may encounter substantial prejudice in civilian life.

9. On 5 February 2002, the applicant's immediate commander recommended approval of his request for separation under the provisions of AR 635-200, Chapter 10. Additionally recommending an UOTHC discharge.

10. On 8 February 2002, the separation authority approved the requested discharge in lieu of court-martial, and directed he receive an UOTHC characterization of service, with reduction to the lowest enlisted grade of E-1.

11. The applicant was discharged on 25 February 2002, under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial, in the grade of E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his character of service was UOTHC. He was credited with 1 year, 10 months, and 20 days of net active service, with lost time from 20 April 2000 to 21 October 2000.

12. Administrative separations under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial. An under other than honorable conditions character of service is normally considered appropriate.

13. 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:

The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character 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

[REDACTED] [REDACTED] [REDACTED] 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.

4/1/2025

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 - Enlisted Personnel), in effect at the time, provided guidance for the administrative separation of enlisted personnel:
 - a. Chapter 10 of this regulation provided a member who has committed an offense or offenses, the punishment for which, under the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, or, until final action on the case by the court-martial convening authority. A member who is under a suspended sentence of a punitive discharge may also submit a request for discharge for the good of the Service. An under other than honorable conditions discharge certificate normally is appropriate for a member who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.
 - b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.
 - c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - d. An under other than honorable conditions discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and 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/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//