

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2025

DOCKET NUMBER: AR20240004563

APPLICANT REQUESTS: upgrade of his under other than honorable conditions discharge 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, in effect, he was not informed that requesting an early expiration of term of service (ETS) would result in an other than honorable conditions discharge. He went on leave and remained on leave for two weeks longer than approved. He reported to another duty station and informed them that he was on leave and was currently absent without leave (AWOL). He was subsequently returned to a unit at Fort Knox and reported to the commander.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 27 January 1988.
 - b. His duty status, after being AWOL for 30 days, changed as follows:
 - From AWOL to Dropped from Unit Rolls (DFR), effective 3 February 1991
 - From DFR to Attached/Present for Duty, effective 18 November 1991
 - c. DD Form 458 (Charge Sheet) shows court martial charges were preferred on 26 November 1991, for on or about 4 January 1991, without authority, absent himself from his organization and did remain so absent until on or about 18 November 1991.

d. On 26 November 1991, he requested separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10 for the good of the service; his charge shows as “Article 86, AWOL.” He submitted a letter in his own behalf, stating the following reasons for going AWOL:

- His father passed away less than two months after his return from Germany; he had not seen his father in over two years.
- His mother fell into depression and, shortly after his father's death, turned to antidepressant medications, eventually losing everything, including the family home.
- As the youngest of three sons, he was the only one present to provide both moral and financial support. He felt it was his duty and responsibility before God to help and support his mother in any way he could.

e. His chain of command recommended approval and recommended an under other than honorable conditions discharge.

f. On 3 December 1991, the separation authority approved his Request for Discharge for the good of the service under the provisions of AR 635-200, chapter 10. He directed the applicant service to be characterized as Under Other Than Honorable conditions and be reduced to the lowest enlisted grade.

g. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 30 January 1992, under other than honorable conditions.

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

5. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

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 reviewing the applicant's petition and military records, the Board found insufficient evidence of mitigating factors to offset the misconduct of AWOL. The applicant did not submit post-

service achievements or character references to support his honorable conduct after discharge, factors that might have mitigated the misconduct leading to the characterization of his discharge

2. Furthermore, the Board concurred that the applicant has not demonstrated, by a preponderance of the evidence, an error or injustice warranting the requested relief—specifically, an upgrade of the Under Other Than Honorable Conditions (UOTHC) discharge to an honorable discharge. Accordingly, the Board denied the request.

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) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service. The regulation in effect at the time stated individuals in pay grades E-5 and above could be processed for separation upon discovery of a drug offense. Those in pay grades below E-5 could also be processed after a first drug offense and must have been processed for separation after a second offense. The issuance of a discharge under other than honorable conditions was normally considered appropriate.

a. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. 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. A characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

3. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

4. 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//