

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 January 2025

DOCKET NUMBER: AR20240005585

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)
- DD Form 293 (Application for the Review of Discharge)

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 the last 20 years he has watched his two sons grow up and become very mature and honest men. He has had a change in his thoughts and morals. He would also like to seek Department of Veterans Affairs benefits in his future retirement. He paid the price of his wrongdoing and has learned to not look back and keep moving forward.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 19 February 1988. He re-enlisted on 31 October 1989 and 5 August 1993, for continuous honorable active service from 19 February 1988 until 4 August 1993.
 - b. He served in Belgium from 24 February 1991 to 4 March 1994.
 - c. The complete facts and circumstances surrounding the applicant's separation are unavailable for the Board to review. His record contains a memorandum from the commanding general directing the applicant's discharge from the U.S. Army under the provisions of Chapter 10, [Army Regulation 635-200 (Personnel Separations – Enlisted Personnel)], Discharge in Lieu of Trial by Courts-Martial. The charge and specification

preferred on 17 January 1994 is dismissed without prejudice to the Government. His service would be characterized as under other than honorable conditions.

d. The applicant was discharged on 7 March 1994 under the provisions of Chapter 10, Army Regulation 635-200, in lieu of trial by court-martial with an under other than honorable conditions characterization of service. He completed 5 years, 10 months, and 17 days of active service with no lost time. He was awarded or authorized:

- Army Commendation Medal
- Good Conduct Medal
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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 being an offense punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, 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. However, the Board noted the applicant's continuous honorable service for the period 26 April 1988 to 8 April 1993 and determined his record should reflect this period of continuous honorable service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 7 March 1994, to show: "Continuous Honorable Active Service From 19880426 Until 19930408."
2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to a discharge upgrade.

5/12/2025

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, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 1-13a (Honorable Discharge) states an honorable discharge is a separation with honor. 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.

b. Paragraph 1-13b (General Discharge) states a 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.

c. Chapter 10 (Discharge for the Good of the Service) states a member who has committed an offense or offenses, the punishment for any of which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service.

3. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences. The guidance further describes evidence sources and criteria and requires boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

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//