

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 April 2025

DOCKET NUMBER: AR20240005982

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)
- Congressman letter notifying the applicant that he needed to complete an authorization form and submit any supporting documents to his office for assistance
- Authorization form authorizing the office of his congressman to assist in his case
- Request pertaining to military records to obtain records from service

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 three days before his scheduled honorable discharge, he left early without proper out-processing due to the emotional distress caused by learning of his wife's infidelity. This impulsive decision led to an other than honorable discharge and a month in the brig. Given his age of 20 and the circumstances he believes this was unjust. He served honorably with his unit in Germany, where his conduct was exemplary. However, upon his return to the U.S. he made a regrettable mistake due to personal turmoil. The administrators stateside at the out-processing center who had no personal knowledge of his service in Germany responded with an other than honorable discharge.
3. A review of the applicant's service records shows:
  - a. He enlisted in the Regular Army on 17 May 1977.

b. He served overseas in Germany from 18 September 1977 to 17 September 1979.

c. He received non-judicial punishment on/for:

- 19 January 1978, on or about 14 January 1978, drunk and disorderly in quarters; he was reduced to private/E-1
- 5 December 1978, on or about 1 November 1978, twice failed to go at the time prescribed to his appointed place of duty; he appealed, and his appeal was denied by the next higher commander on 14 December 1978
- 25 January 1979, on or about 28 December 1978, without authority, failed to go at the time prescribed to his appointed place of duty; he was reduced to private/E-2 (suspended for 60 days)

d. The applicant's record is void of the complete facts and circumstances that led to his separation. However, his service record contains a DD Form 214 that shows he was discharged for conduct triable by court martial with a characterization of service of under other than honorable conditions. It also shows he completed 2 years, 8 months, and 12 days of active service with lost time from 791203 – 800102 (3 December 1979 – 2 January 1980).

4. On 23 November 1981, the Army Discharge Review Board notified the applicant that after careful consideration of his military records and all other available evidence, the Board determined that he was properly and equitably discharged. Accordingly, his request for a change in the type and nature of his discharge was denied.

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. The Board noted the governing regulation provides a request for discharge for the good of the service. could be submitted at any time after charges had been preferred and the applicant's service record included considerable misconduct.

2. Upon review of the applicant’s petition and available military records, the Board found insufficient evidence of in-service mitigating factors to overcome misconduct and the applicant provided no evidence of post-service achievements or letters of support to weigh a clemency determination. Based upon a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

X	
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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, set forth the basic authority for the separation of enlisted personnel, it states:

a. Chapter 10 is applicable to members who had committed an offense or offenses for which the authorized punishment included a bad conduct or dishonorable discharge could submit a request for discharge for the good of the service. The request could be submitted at any time after the charges had been preferred. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service has generally met standards of acceptable conduct and performance of duty for Army personnel.

c. 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.

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//