

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 February 2025

DOCKET NUMBER: AR20240006259

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

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- A self-authored statement
- Character Reference Letters (3)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 he has lived a very productive life since his discharge from the Army. He has been sober for over 28 years. He has worked in the food industry for 37 years. While working with the Sisseton Wahpeton Sioux Tribe, he was asked to prepare and cook food for a community member's funeral. He was also asked to prepare and cook for a Native American Sundance event. Presently, he works for Frito-Lay as a delivery driver. He has not been in any trouble since leaving the Army.

a. He made a huge mistake when he was drunk at a party at Fort Campbell, KY. He served our country the best he could. He is ashamed to this day for his irresponsibility and would like nothing more than to have his dignity back. His father has been gone for over 10 years, and he wanted nothing more than to make him proud before his passing but was unable to. He wants to be held accountable for my actions that took place that night. He should not have been at that party or smoked the joint, that he later learned contained cocaine. His mistake set him back in life and will continue to do so if the Board does not approve his request.

- b. He is proud to say he served with some great brothers in arms while in Iraq. They lost a fellow brother in Iraq to anti-personnel mines from friendly fire. He misses the Army every day and would have made a career of it if he was able too.
3. On 3 January 1990, the applicant enlisted in the Regular Army for 4 years and 17 weeks. Upon completion of entry level training, he was assigned to a unit in Germany.
 4. The applicant was advanced to private first class (PFC)/E-3 on 1 September 1990, the highest rank/grade he held while serving.
 5. Item 5 (Oversea Service) of the applicant's DA Form 2-1 (Personnel Qualification Record - Part II) shows he served in Saudi Arabia from 20 December 1990 to 18 May 1991. He was subsequently reassigned to a unit at Fort Campbell, KY.
 6. A DD Form 458 (Charge Sheet) shows on 2 November 1992, court-martial charges were preferred against the applicant for violation of Article 112a of the Uniform Code of Military Justice (UCMJ) for wrongfully using cocaine on or about 11 September 1992.
 7. On 4 November 1992, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, for the good of the service in lieu of trial by court-martial. He consulted with legal counsel and was advised of the basis for the trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him. He elected to submit a statement in his own behalf. However, there is no such statement present in his available personnel file.
 8. The applicant's company, battalion, and brigade level commanders each recommended approval of the applicant's separation with a discharge UOTHC.
 9. On 25 November 1992, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial, with his service characterized as UOTHC. He further directed the applicant be reduced from PFC/E-3 to Private/E-1 prior to the execution of the discharge.
 10. Orders and the applicant's DD Form 214 show he was discharged on 2 December 1992, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "For the Good of the Service" with Separation Program Designator code "JFS" and Reentry Eligibility code "3." He was credited with completing 2 years and 11 months of net active service this period. He did not complete his first full term of service.
 11. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. In doing so, he would have waived his opportunity to appear

before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

12. The applicant provides character reference letters from his wife, coworker, and a friend, who describe him as hardworking, dependable, and responsible. He is patriotic and a great role model.

13. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

BOARD DISCUSSION:

1. 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 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 record, the Board noted the applicant's combat service, including deployment to Saudi Arabia in support of Operation Desert Storm, and his advancement to the rank of private first class (PFC)/E-3.

2. The Board acknowledged the applicant's post-service conduct and compelling evidence of rehabilitation. The Board commended the applicant's sobriety for over 28 years, built a stable and productive career in the food industry, and currently works as a delivery driver for a national company. His community involvement, including service to the Sisseton Wahpeton Sioux Tribe, and strong character references from family and colleagues, reflect a life of accountability and positive contribution. The Board did not find sufficient evidence to warrant an upgrade to fully honorable, it agreed that the applicant's post-service record and demonstrated remorse merit clemency. Therefore, the Board granted partial relief by upgrading the applicant's characterization of service to general under honorable conditions.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
XXX	XXX	XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 for the period ending 2 December 1992, showing his characterization of service as General Under Honorable Conditions.

2. The Board further determined 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 an upgrade of the applicant's characterization of service from under other than honorable conditions (UOTHC) to honorable.

X //SIGNED//

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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by 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.

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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

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/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, 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//