

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2025

DOCKET NUMBER: AR20240007649

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement

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 his uncle, who raised him, passed away while he was in the service and he made the decision to attend his funeral and did not have enough leave accrued, so he was absent without leave (AWOL). When he returned 2 weeks later, he was arrested, charged with being AWOL, received a record of nonjudicial punishment, and discharged. He deeply regrets his actions years ago and has matured considerably since that decision. He is seeking Department of Veterans Affairs (VA) benefits.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 4 May 1995.
 - b. On 2 May 1996, court-martial charges were preferred against the applicant for one specification of being AWOL from 24 November 1995 to 27 April 1996.
 - c. Also on 2 May 1996, the applicant consulted with counsel and voluntarily submitted a request for discharge in lieu of trial by court-martial because of the charge which had been preferred against him under the Uniform Code of Military Justice which authorizes the imposition of a bad conduct or dishonorable discharge.

(1) He understood if his request for discharge was accepted, he may be discharged under conditions which are other than honorable and furnished an Under Other Than Honorable Discharge Certificate.

(2) He understood he may be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered by the VA, and that he may be deprived of his rights and benefits as a veteran under both Federal and State law.

(3) He understood he may expect to encounter substantial prejudice in civilian life because of an under other than honorable discharge.

d. Consistent with the chain of command recommendations, on 6 June 1995, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He directed an under other than honorable conditions discharge and reduction to the lowest enlisted grade.

e. On 8 August 1996, the applicant was discharged under the provisions of Chapter 10, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) with an under other than honorable conditions characterization of service. He completed 10 months and 2 days of active service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was awarded or authorized the National Defense Service Medal, Army Service Ribbon, and Marksman Marksmanship Qualification Badge with Rifle Bar (M-16).

4. By regulation, a Soldier who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. A discharge under other than honorable conditions is appropriate for a Soldier who is discharge for the good of the service.

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

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to the misconduct leading to the applicant's separation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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 //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. (Optional as applicable.) 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 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//