

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 February 2025

DOCKET NUMBER: AR20240008068

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

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-written statement
- DD Form 214 (Report of Separation from Active Duty), 10 July 1979

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:

a. In 1997 while in Advanced Individual Training at Fort Rucker, AL, he was arrested and charged with "Rape" of a female Soldier. He was placed under house arrest in the male barracks. While under house arrest, he woke up with pain. It was dark and he could not see anything, he was being beat-up and held down and not move. He was afraid for his life and when he reported it, they asked who did it and he said he did not know. The sergeant ordered him back to his room. He was found innocent of all charges and receive an Article 15 for having a female in the male dorm. This incident followed him to his next duty station at Fort Lewis, WA, where he was always the subject of sexual jokes. This led to him getting into fights.

b. He was accused of breaking into a room in the dorm at Fort Lewis. He had been beat up some many times, he just gave up and became afraid for his life and was going to buy a firearm. He never bought the firearm, but he bought bullets. He continued to be the target of jokes and could not take it anymore. He was told to take the other than honorable discharge, "that let things cool down and he could reenlist in one year as you

can see on the DD Form 214 attached” the authority and reason is blank. The charge was dismissed due to the female Soldier being untruthful. He indicated on his DD Form 293 that mental health and sexual assault/harassment are related to his request.

3. A review of the applicant’s military service record shows:

a. He enlisted in the Regular Army on 7 July 1977.

b. On 21 November 1977, DA Form 2496 (Disposition Form) shows he was recommended for elimination from the 71P (Flight Operations Specialist) course of instruction for misconduct. He was pending disciplinary action for escorting a female Soldier into the male barracks.

c. On 25 November 1977, the request for administrative elimination of the applicant for misconduct was approved and he should not be considered for further 71P training.

d. On 29 November 1977, the applicant received non-judicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for failing to obey a lawful order by assisting a female into the male barracks. His punishment consisted of reduction to private (PV1)/E-1 and forfeiture of \$190.00 per month for 2 months. He appealed and did not submit matters for consideration; nevertheless, his appeal was denied on 2 December 1977.

e. On 19 January 1979, the applicant accepted NJP under the provisions of Article 15 of the UCMJ for failing to obey a lawful order to report to Building 1A21 not later than 0800 hours, 18 January 1979 with the proper rank and insignia on his green and khaki uniforms. His punishment consisted of extra duty for 14 days and confinement for 7 days (suspended for 30 days). He did not appeal.

f. On 8 February 1979, the suspension of punishment of confinement for 7 days imposed on 19 January 1979 against the applicant was vacated and the unexecuted portion of the punishment would be duly executed.

g. On 5 March 1979, the applicant accepted NJP under the provisions of Article 15 of the UCMJ for wrongfully possessing marijuana and failing to obey a lawful order by having 102 rounds of ammunition in his wall locker. His punishment consisted of forfeiture of \$500.00 per month for 2 months and confinement for 14 days (suspended for 30 days). He did not appeal.

h. On 6 March 1979, DA Form 4126-R (Bar to Enlistment/Reenlistment Certificate) shows a Bar to Reenlistment was initiated against the applicant for his multiple acts of misconduct and indiscipline listed above. He acknowledged that he had been counseled

and advised of the basis for this action and elected not to submit a statement in his own behalf. His chain of command of recommended approval.

i. On 4 April 1979, DD Form 458 (Charge Sheet) shows court-martial charges were preferred against the applicant for:

- Stealing a stereo receiver, turntable, and two speakers
- Stealing a receiver with cassette player, turntable, and speakers
- Unlawfully entering room 10 of building 1A13, the property of the United States, with intent to commit the criminal offense of larceny
- Unlawfully entering room 15 of building 1A13, the property of the United States, with intent to commit the criminal offense of larceny
- Receiving stolen property and knowing it was stolen, which constituted a clear threat to the physical security of personal property of Soldiers stationed at Fort Lewis, WA

j. On 10 April 1979, the Bar to Reenlistment initiated against the applicant was approved.

k. On 21 June 1979:

(1) The applicant voluntarily requested to be discharged for the good of the service under the provisions of Chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel).

(a) He acknowledged that he understood he may request discharge for the good of the service because of the charges which had been preferred against him under the UCMJ, each of which authorized the imposition of a bad conduct or dishonorable discharge. He also acknowledged he made the request of his own free will and had not been subjected to any coercion whatsoever by any person and he elected not to submit a statement in his own behalf.

(b) He was advised by legal counsel of the basis for his contemplated trial by court-martial and the maximum permissible punishment authorized under the UCMJ; of the possible effects of an Under Other Than Honorable Discharge if the request was approved; and of the procedures and rights available to him.

(2) The separation authority approved the applicant's request to be discharged and directed he be furnished a DD Form 794A (Discharge Certificate Under Other Than Honorable Conditions) and reduced to the lowest enlisted grade immediately.

(3) The court-martial charges were withdrawn and returned to the applicant's command.

l. On 25 June 1979, the applicant was medically cleared for Chapter 10 administrative separation.

m. On 10 July 1979, the applicant was discharged accordingly. He completed 2 years and 4 days net active service. His DD Form 214, copy 2, shows in:

- item 6a (Grade, Rate or Rank) – PV1
- item 9c (Authority and Reason) – Chapter 10, AR 635-200, Separation Program Designator: JFS
- item 9e (Character of Service) – Under Other Than Honorable Conditions [UOTHC]
- item 27 (Remarks) – Administrative discharge - Conduct triable by court-martial

4. On 16 December 2024, the Criminal Investigation Division, Quantico, VA, provided a Law Enforcement Report of Investigation which shows, in pertinent part, the applicant was titled for rape and assault, and on 29 November 1977, the applicant was punished under the provisions of Article 15, UCMJ, for the rape of [redacted]. He was reduced to the grade of PV1 and fined \$190.00 a month for a period of two months.

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 pattern of misconduct leading to the applicant’s separation, including some involving serious criminal misconduct, 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.

//SIGNED//

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 (AR) 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, it states 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. The ABCMR will decide cases based on the evidence of record. It is not an investigative agency.
3. AR 600-200 (Enlisted Personnel Management System), in effect at the time, stated when the general court-martial authority determined that a Soldier was to be discharged from the service under other than honorable conditions he was reduced to the lowest enlisted grade. Board action was not required for this reduction.
4. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the administrative separation of enlisted personnel.
 - a. Chapter 10 stated a member who was charged with an offense or offenses for which the authorized punishment included a punitive discharge could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have

included the individual's admission of guilt. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally issued to an individual who was discharged for the good of the service.

b. An honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would have been clearly inappropriate.

c. A general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. An UOTHC is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct. In a case in which an UOTHC is authorized by regulation, a member may be awarded an honorable or general discharge, if during the current enlistment period of obligated service he has been awarded a personal decoration or if warranted by the particular circumstances of a specific case.

5. 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 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//