

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 April 2025

DOCKET NUMBER: AR20240008163

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)

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 he was a young man and made a terrible mistake and the Army did not allow him to make amends for this error. At the time of his separation, he was told his unit did not want him back and the Army chose to discharge him. He would like his discharge upgraded to (general) under honorable conditions because he chose to return to the Army and finish out his time. He voluntarily turned himself into Fort Dix military police to face his consequences.
 - a. At the time of his separation his mom was being beat up by his dad. He was the youngest sibling and very close to his mom. He expressed his concerns to his platoon leader, but he would just say you are in the Army now boy. He has photos to show of her physical abuse from his dad. It was later because of his mom that he voluntarily turned himself back into the Army and he still received other than honorable discharge. Even after that he was told that he had to sign up for selective service and he did that as well, he tried to make this right.
 - b. He never knew it was a possibility to have his discharge changed until he went for a job at the post office and the guy that called him back to discuss his possibilities of employment told him that he should try to upgrade his discharge.
3. A review of the applicant's service record shows:

- a. He enlisted in the Regular Army on 10 September 1979.
 - b. His DA Form 2-1 (Personnel Qualification Record – Part II) shows he was absent without leave (AWOL) from:
 - 23 February 1980 – 16 April 1980
 - 16 April 1980 – 30 May 1984
 - c. The applicant's record is void of the complete facts and circumstances that led to his separation. However, his service record contains an incomplete DD Form 458 (Charge Sheet) which shows court martial charges were preferred on 17 May 1984, for being AWOL from on or about 17 April 1980 until date not established.
 - d. Accordingly, he was discharged under honorable conditions on 10 July 1984, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 6 months and 22 days net active service this period. He had lost time from 23 February 1980 – 16 April 1980 and 16 April 1980 – 30 May 1984.
4. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.
 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:

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 considered the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. Upon review of the applicant's request and available military records, the Board found insufficient evidence of in-service mitigating factors for the 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
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. 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) 635-200 (Personnel Separations - Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

a. An honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

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

c. A characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

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//