

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 April 2025

DOCKET NUMBER: AR20240008346

APPLICANT REQUESTS: an upgrade of his character of service from under other than honorable conditions (UOTHC) to under honorable conditions (general), and an appearance before the Board via video/telephone.

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

DD Form 149 (Application for Correction of Military Record), 26 May 2024

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 told he could not receive benefits and that he could not upgrade his discharge; however, he believes there was blatant neglect about the information and proper procedures he was given as to when and how to receive any benefits.
3. A review of the applicant's service record shows the following:
 - a. He enlisted in the Regular Army on 10 June 1993, for a 4-year period.
 - b. The highest rank he attained was private first class/E-3.
 - c. He accepted three non-judicial punishments, under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ):
 - (1) On 16 September 1994 for being disrespectful in language towards his superior noncommissioned officer. His punishment imposed was reduction to the grade of E-2, extra duty for 14 days, and restriction for 14 days.

(2) On 21 October 1994 for failing to go to his prescribed appointed place of duty on or about 29 September 1994. His punishment imposed was reduction to the grade of E-1 and extra duty for 14 days.

(3) On 15 December 1994 for stealing four compact discs, the property of Army Air Force Exchange Services on or about 27 November 1994. His punishment imposed was forfeiture of \$50.00, extra duty for 14 days, and restriction for 14 days.

d. His records are void of a complete separation packet; however, on 5 January 1995 he consulted with counsel for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) Chapter 14 (Separation for Misconduct). He was advised of the basis for the contemplated action to separate him and of the rights available to him. He requested consideration of his case by an administrative separation board, he requested a personal appearance before an administrative board, he elected to submit a statement in his own behalf, and further understood he may encounter prejudice in civilian life if an under honorable conditions (general) discharge was issued to him.

e. He requested a conditional waiver on 13 February 1995, the Board found by a preponderance of the evidence he committed the misconduct as was alleged in notice of proposed separation, the Board recommended he be separated from the service and further recommended an UOTHC discharge.

f. He was discharged on 8 June 1995, under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct, in the grade of E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he received a character of service of UOTHC. He was credited with 1 year, 11 months, and 29 days of net active service.

4. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

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 and the lack of any mitigation and/or clemency evidence provided by the applicant, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 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 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.

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. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.

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

c. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

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.

//NOTHING FOLLOWS//