

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 April 2025

DOCKET NUMBER: AR20240008348

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

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

- DD Form 149 (Application for Correction of Military Record), 11 June 2024
- three-character reference statements

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 young and naive during his time serving, he found it difficult to take orders. Since his discharge he has seen how individuals needed the structure the Army offered, and it was necessary for him getting through life. He believes he is a changed person, for the better, and he needs an upgrade of his discharge to continue thriving in his new life he has created for himself, thanks to the military.

3. A review of the applicant's service record shows the following:

- a. He enlisted in the Regular Army on 30 November 1977, for a 4-year period.
- b. The highest rank he attained was private first class/E-3.
- c. On 22 October 1980, court martial charges were preferred against him for violation of the Uniform Code of Military Justice (UCMJ) for being absent without leave (AWOL) on or about 12 December 1978 and remaining AWOL until on or about 3 October 1980, he was apprehended by civil authorities.

d. He consulted with legal counsel on 22 October 1980. After consulting with counsel, he executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). He acknowledged his understanding of the following in his request:

(1) He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

(2) Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to him.

(3) He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected not to submit a statement in his own behalf.

e. His immediate and intermediate commanders recommended approval of his request for discharge for the good of the service and further recommended issuance of an UOTHC discharge.

f. The separation authority approved his request for discharge on 15 December 1980, directed he be reduced to the lowest enlisted grade and issued a DD Form 794A (UOTHC Discharge Certificate).

g. He was discharged accordingly on 24 December 1980, under the provisions of AR 635-200, Chapter 10, in the grade of E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his service was characterized as UOTHC with reenlistment code 3, 3B. He served 1 years, 2 months, and 24 days of net active service with time lost from:

- 14 November 1978 to 23 November 1978
- 12 December 1978 to 2 October 1980

4. The applicant provides three-character reference statements:

a. From [REDACTED] who summarizes an incident the applicant encountered, stating the applicant narrowly avoided a catastrophic explosion from a live grenade, or similar

device. The close brush with danger affected him, impaired his hearing, and shattered his sense of security, he struggled to adapt and had to seek discharge.

b. From [REDACTED] who summarizes an event of the applicant encountering a live grenade which negatively affected him to include his hearing and his suffering with post-traumatic stress disorder.

c. From [REDACTED] who described an event in which occurred with her and the applicant summarizing an event at the motor pool where the applicant was close to an explosion, which killed one person. She states the event was chaotic, and the events of the explosion have led to her having post-traumatic stress disorder and she believes the applicant's negative behaviors were from this event.

5. 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, 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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the character letters, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with being absent without leave from 12 December 1978 to 3 October 1980, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	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.

4/15/2025

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 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 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.

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.

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/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//