

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 April 2025

DOCKET NUMBER: AR20240009027

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), 3 June 2024
- Attachment 1 – Events Leading to Separation
- Attachment 2 – Resume
- Attachment 3 – Character Letters
- Attachment 4 – DD Form 214 (Certificate of Release or Discharge from Active Duty), 14 June 2002
- Attachment 5 – Enlistment/Reenlistment Documents
- Attachment 6 – Awards, Certificates, and Training
- Attachment 7 – Statement of Prior Service
- Attachment 8 – [REDACTED] University Transcript – Communication Degree, BA
- Attachment 9 – Current Job Information – United States Department of Agriculture

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 request for an upgrade of his discharge is based on his conduct prior to an incident and his post service conduct. He explains the incident as having moved to the barracks, where he improperly stored his firearm. He describes he was a sergeant/E-5 in the barracks with a firearm and who allowed his firearm to be acquired by a specialist/E-4 who attempted to harm another Soldier with "his" firearm. He took a Chapter 10 discharge, not knowing what it entailed. He had a flawless record and numerous accomplishments while serving. Since his discharge he earned a Bachelor of Arts in Communication, made the National Dean's list consecutively in

2004-2006, was a minority honor's student consecutively in 2004-2008, works at the Department of Agriculture while pursuing his master's degree, and has earned numerous accolades while working at the Department of Agriculture.

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

a. He enlisted in the Regular Army on 14 May 1996, for a 4-year period. He reenlisted on 20 October 1998, for a 3-year period and on 20 October 2000, for a 3-year period.

b. The highest rank he attained was sergeant/E-5.

c. On 25 March 2002, court martial charges were preferred against him for violations of the Uniform Code of Military Justice (UCMJ) for:

- unlawfully striking Private [REDACTED] on the head with a handgun on or about 17 December 2001
- two specifications of violating a lawful general regulation
- dereliction of duty on or about 17 December 2001
- unlawfully carrying on or about his person a concealed weapon
- wrongfully endeavoring to impede an investigation on or about 18 December 2001

d. He consulted with legal counsel on 28 March 2002. 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 in Lieu of Trial by Court-Martial). 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 discharge, 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 and further understood he may encounter prejudice in his civilian life.

- e. On 1 April 2002, his immediate and intermediate commanders recommended approval of his request for discharge in lieu of trial by court-martial.
- f. The separation authority approved his request for discharge on 19 April 2002, directed he be reduced to the lowest enlisted grade and separated with an UOTHC characterization of service.
- g. He was discharged accordingly on 14 June 2002, under the provisions of AR 635-200, Chapter 10, in the grade of E-1. His DD Form 214 shows his service was characterized as UOTHC with reentry code 4. He served 6 years, 1 month, and 1 day of net active service.

5. The applicant provides:

- a. A self-authored statement detailing the incident of events leading to his separation, current resume, job information, enlistment/reenlistment documents, separation document, and his various awards, certificates, and training earned, as well as his transcripts and his degree.
- b. Six-character reference statements who summarize the applicant as honorably, trustworthy, wise, loyal friend and husband, protective father, upstanding citizen, patient, kind, and hard worker. They believe the applicant should receive an upgraded discharge due to his positive accolades within himself and his life since his discharge.

6. 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:

1. 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 unlawfully striking a Soldier on the head with a handgun on or about 17 December 2001, two specifications of violating a lawful general regulation, dereliction of duty on or about 17 December 2001, unlawfully carrying on or about his person a concealed weapon, and wrongfully endeavoring to impede an investigation on or about 18 December 2001,

punishable by Court-Martial. 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.

2. Prior to closing the discussion, the Board noted the applicant's continuous honorable service from 14 May 1996 to 19 October 2000, prior to his misconduct and concurred with the administrative note below.

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 as it pertains to the applicant's characterization of service. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

4/16/2025

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending 14 June 2002, is missing an important entry that may affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entry in item 18 (Remarks): "CONTINUOUS HONORABLE SERVICE FROM 960514 UNTIL 001019"

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//