

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2025

DOCKET NUMBER: AR20240009031

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 293 (Application for the Review of Discharge)

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 unjustly put of the Army. He had to go see an attorney concerning his Article 15. A sergeant from his unit gave him a ride to the attorney's office. The vehicle was pulled over and drugs were discovered. He was only a passenger, he had nothing to do with the drugs.
3. On 24 April 1981, the applicant enlisted in the Regular Army.
4. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ). Page 2 of his DD Form 458 (Charge Sheet) shows he was charged with two specifications of wrongfully possessing, between .82 grams and 1.25 grams, more or less, of marijuana in the hashish form, on or about 20 April 1982, and on or about 24 April 1982; two specifications of wrongfully transferring, between .82 grams and 1.25 grams, more or less, of marijuana in the hashish form, on or about 20 April 1982, and on or about 24 April 1982; and two specifications of wrongfully selling, between .82 grams and 1.25 grams, more or less, of marijuana in the hashish form, on or about 20 April 1982, and on or about 24 April 1982.
5. On 17 June 1982, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

6. On 18 June 1982, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a bad conduct discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

b. He declined to submit a statement in his own behalf.

7. The applicant's commander recommended approval of his request for discharge, and further recommended the issuance of an UOTHC discharge certificate.

8. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge on 6 July 1982, and directed his reduction to the lowest enlisted grade with issuance of a DD Form 794A (UOTHC Discharge Certificate).

9. The applicant was discharged on 16 July 1982. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for conduct triable by court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 1 year, 2 months, and 23 days of active service.

10. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency 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 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 frequency and nature of the applicant’s misconduct and the reason for separation. The applicant was charged with selling marijuana, 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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
Signed by:

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) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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.

b. 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.

c. Chapter 10 provided that a member who had committed 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 UOTHC discharge was normally considered appropriate.

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//