

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 April 2025

DOCKET NUMBER: AR20240009280

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

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record), 20 June 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 regrets his behavior and actions, but he learned from his mistakes. He fully took responsibility for his actions and behavior when he was a member of the military. In 1993, he applied for an upgrade and was given an under honorable conditions (general) discharge.
3. A review of the applicant's service records show:
  - a. On 8 February 1983, he enlisted for 3 years. He was promoted to specialist 4/E-4 on 1 October 1984.
  - b. On 12 February 1985, his commanding officer reprimanded him for aggravated assault. He understood it could result in his separation from the Army. The letter was filed in his Official Military Personnel File. He elected not to rebut the letter of reprimand.
  - c. He accepted company grade nonjudicial punishment (NJP):
    - (1) On 25 April 1985 for missing movement on or about 12 April 1985. He was reduced to private first class (PFC) (suspended for five months); forfeiture of \$168.00 and 14 days of extra duty.

(2) On 10 June 1985 NJP (supplemental) for failing to complete his extra duty; the suspended reduction to PFC was vacated.

(3) On 12 July 1985, for failing to go to his appointed place of duty on or about 3 July 1985. He was reduced to private 2 (PV2) and received 14 days of extra duty.

d. On 20 November 1985, he was confined at (County) jail as part of a court-martial punishment.

e. He was reported absent without leave (AWOL) from 7 February 1986 to 9 February 1986 (3 days).

f. He was reported as AWOL on 11 February 1986.

g. On 27 February 1986, a Bar to Enlistment was imposed against him. A DA Form 4126-A (Bar to Enlistment Certificate) reflects:

(1) NJP on 25 April 1985 and 12 July 1985 cumulatively reduced him to PV2 with forfeitures and extra duties.

(2) Conviction by General Court-Martial sentenced him to reduction to E-1, confinement for 3 months, and forfeiture of \$426.00. The sentence was approved on 20 November 1985.

h. On 13 March 1986, he was dropped from the rolls. On the same date, his battery commander referred a court-martial charge against him. A DD Form 458 (Charge Sheet) shows he was charged with one specification of AWOL from 11 February 1986 to an unspecified date.

i. On 26 March 1986, his status changed to present for duty.

j. A Charge Sheet reflecting the dates of AWOL, a memorandum reflecting his voluntary request for discharge under the provisions of Chapter 10, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), his commander's and intermediate commander's recommendation memoranda, and the separation authority memorandum are not available in his records.

k. Orders 93-16 issued by Headquarters, XVIII Airborne Corps and Fort Bragg, reassigned him to separation processing with a discharge date of 22 May 1986.

l. On 22 May 1986, he was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects he was separated under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service-in lieu of trial by court-

martial, with a character of service of under other than honorable conditions. He completed 2 years, 11 months, and 12 days of net active service this period. He had 77 days' time lost due to confinement (20 November 1985 to 4 February 1986).

4. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade 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 service record in accordance with the published equity, injustice, or clemency determination guidance.

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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. The Board considered the applicant's statement, the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. The Board noted the applicant voluntarily requested discharge in lieu of trial by court martial.

2. The Board found insufficient evidence of in-service mitigating factors to overcome the misconduct for the Board to weigh a clemency determination. The applicant provided no post service achievements or character letters of support that might have mitigated the applicant's character of service. 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:

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.



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 policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3-7 provided:

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

(2) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

b. Chapter 10 stated a member who has committed an offense or offenses, the punishment of which under the UCMJ and the Manual for Court Martial, 1969 (Revised Edition) includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, or, where required, after referral, until final actions by the court-martial convening authority.

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//