

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 April 2025

DOCKET NUMBER: AR20240010709

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

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

- DD Form 149 (Application for Correction of Military Record)
- two-character references

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 not mature enough for the military and he regrets his behavior and the decisions he made. If he could go back and redo his service, he would have been an exceptional Soldier. He hopes to have his discharge upgraded so his children can be proud of him and for benefits.
3. A review of the applicant's service record shows the following:
 - a. He enlisted in the Regular Army on 25 October 1989, for a 4-year period.
 - b. The highest rank he attained was private/E-1.
 - c. He accepted nonjudicial punishment under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for:
 - being indebted on or about 18 April 1990 to [REDACTED]
 - wrongfully consuming alcohol while being under 21 years old on or about 18 April 1990 and on or about 4 May 1990
 - wrongfully communicating a threat to another Soldier on or about 4 May 1990
 - willfully and unlawfully altering a public record on or about 18 May 1990

d. On 24 August 1990, court martial charges were preferred against him for violation of the Uniform Code of Military Justice (UCMJ) for absenting himself from his unit on or about 1 August 1990, for breaking said restriction on or about 1 August 1990, and wrongfully using cocaine on or between 8 June 1990 and 18 June 1990.

e. He consulted with legal counsel on 26 August 1990. 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.

f. 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.

g. The separation authority approved his request for discharge on 7 September 1980, directed he be reduced to the lowest enlisted grade and discharge characterized as UOTHC.

h. He was discharged accordingly on 13 September 1990, 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 reentry code RE-3. He served 10 months and 2 days of net active service with time lost from 1 August 1990 to 17 August 1990.

4. The applicant provides two-character reference statements from his father and uncle, where they describe him as a great son and father, reliable, responsible, and

believe the Army has provided unity and strength for their family. They both are hopefully that he will get a second chance with an upgrade of his discharge.

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 frequency and nature of the applicant's misconduct and the reason for separation. On 24 August 1990, court martial charges were preferred against him for violation of the Uniform Code of Military Justice (UCMJ) for absenting himself from his unit on or about 1 August 1990, for breaking said restriction on or about 1 August 1990, and wrongfully using cocaine on or between 8 June 1990 and 18 June 1990, punishable under the UCMJ 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. The Board noted the applicant's misconduct throughout his 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.

4/16/2025

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.

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//