

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 April 2025

DOCKET NUMBER: AR20240011562

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge, and a personal appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record), 1 July 2024
- Self-authored statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 17 July 1987
- Separation Documents from his Official Military Personnel File
- Department of Veterans Affairs (VA) information sheet

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 discharge was not made in accordance with the agreement with his command legal counsel, the separation authority overrode the recommended separation and issued him an UOTHC discharge. Post discharge he completed college, worked for over 34 years, and wants a clear record and honorable discharge that he feels he is due.
3. A review of the applicant's service record shows the following:
 - a. He enlisted in the Regular Army on 5 October 1977, for a 3-year period. He reenlisted on 16 April 1980 and again on 2 July 1984.
 - b. The highest rank he attained was staff sergeant/E-6.

c. On 29 May 1987, court martial charges were preferred against him for violations of the Uniform Code of Military Justice (UCMJ). The DA Form 458 (Charge Sheet) shows he was charged with:

(1) Two specifications of being derelict in the performance of his duties when he willfully failed to inventory and list property taken or received by him on or about 11 April 1987 and on or about 9 May 1987.

(2) Two specifications of stealing, the currency of \$10.00 on or about 11 April 1987 and \$20.00 on or about 9 May 1987.

d. His record is void of a complete separation packet; however, he requested discharge for the good of the service with issuance of an under honorable conditions (general) discharge. An undated statement in his own behalf shows he requested a General (under honorable conditions) discharge and consideration of his past military record.

e. His immediate commander recommended approval on his request for discharge for the good of the service on 16 June 1987. Further adding based on his meritorious service prior to the incident it was recommended he be issued an under honorable conditions (general) discharge.

f. The separation authority's approval is not available for review.

g. He was discharged on 17 July 1987, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service in lieu of court-martial, in the grade of E-1. His DD Form 214 shows his service was characterized as UOTHC. He served 9 years, 9 months, and 13 days of net active service this period.

4. He additionally provides:

a. Statement from specialist █ who wrote on his behalf during his discharge stating she did not believe the accusations were correct and the whole situation was unfair for the applicant.

b. Court-martial convening orders, 13-page self-written statement of what he endured for his military police/criminal investigation division investigation on 9 May to on or about 17 July 1982, and an information paper pertaining to upgrading a 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:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.
2. The Board minority did not recommend any changes to the applicant's characterization of service. The minority felt the applicant was properly and equitably discharged in accordance with the applicable regulation in effect at the time.
3. The Board majority felt the applicant's under other than honorable conditions characterization of service was overly harsh based on the totality of the applicant's service. The Board majority determined the applicant's character of service should be upgraded to under honorable conditions (general). Additionally, as a result of the correction, his rank should be restored to Staff Sergeant (SSG)/E-6.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:			GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board concurs with the corrections addressed in Administrative Note(s) below and the Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by making the following corrections to the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty):

- correcting blocks 4a. (Grade, Rate or Rank) and 4b. (Pay Grade) to show his rank and grade as staff sergeant (SSG)/E-6
- correcting block 12h (Effective Date of Pay Grade) to show his date of rank as 1 April 1985
- correcting block 24 (Character of Service) to under honorable conditions (general)

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading his characterization of service to honorable.

5/6/2025



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 17 July 1987 is missing important entries that may affect his eligibility for post-service benefits. As a result, amend the DD Form 214 (Certificate of Release or Discharge from Active Duty) by adding the following entries in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 19771005 UNTIL 19840701

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 (AR) 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.
3. AR 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.

4. 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//