

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 May 2025

DOCKET NUMBER: AR20240011854

APPLICANT REQUESTS:

- reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general)
- a video or telephone hearing with the Board

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

DD Form 149 (Application for Correction of Military Record), 30 July 2024.

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20180000224 on 15 April 2019.

2. The applicant states he was at a party where illegal substances were being consumed. He did not partake but when the police raided the event, he was arrested. Instead of a dishonorable discharge, he was given an option for an other than honorable conditions discharge. He was young when this incident happened, over 40 years ago. He takes full responsibility for being in the wrong place and feels he paid his debt.

3. A review of the applicant's service records show the following:

a. On 2 July 1982, he enlisted in the Regular Army for 3 years. He attained the rank of private 2/E-2.

b. A U.S. Army Criminal Investigation Division agent's, Report of Investigation (ROI) number [REDACTED], dated 4 April 1983 and 7 April 1983, reflects he was the subject of an investigation into suspicion of possession and distribution of some amount marijuana in the hashish form, a controlled schedule I substance. This ROI contains witness statements, a laboratory report, evidence custody documents, and the agent's findings.

c. On 12 May 1983, court-martial charges were preferred against him. A DD Form 458 (Charge Sheet) shows he was charged with:

- specification 1: wrongful distribution of 6.29 grams of marijuana, more or less, in the hashish form on 4 April 1983
- specification 2: wrongful distribution of 3.58 grams of marijuana, more or less, in the hashish form on 6 April 1983
- specification 3: wrongful possession of 6.29 grams of marijuana, more or less, in the hashish form on 4 April 1983
- specification 4: wrongful possession of 3.58 grams of marijuana, more or less, in the hashish form on 6 April 1983

d. On 18 May 1983, he was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment, the possible effects of a UOTHC discharge, and the procedures and rights available to him. After receiving legal counsel, he voluntarily requested discharge, in lieu of trial by court-martial, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He did not submit a statement in his own behalf.

e. On 19 May 1983, the intermediate commanders recommended approval of his request; the brigade commander recommended disapproval of his request and trial by court-martial.

f. On 19 May 1983, the staff judge advocate recommended trial by court-martial with an amendment of charges 3 and 4 to read, "with intent to distribute."

g. On 9 June 1983, the separation authority directed discharge for the good of the service with a characterization of service of UOTHC, and further directed he be reduced to the lowest grade.

h. On 1 July 1983, he was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200, chapter 10, for the good of the service-in lieu of court-martial, with a character of service of UOTHC. It further reflects he completed 1 year of net active service.

4. On 15 April 2019 and in ABCMR Docket Number AR20180000244, the Board denied his request for upgrade of his discharge.

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:

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 two counts of possession of marijuana and two counts of distribution of 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. Therefore, the Board denied relief.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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 amendment of the ABCMR decision rendered in Docket Number AR20180000224 on 15 April 2019.

//SIGNED//

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. 1. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity.

a. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

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.

c. An under other than honorable discharge certificate normally is appropriate for a member who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate if such is merited by the member's overall record during the current enlistment.

6. 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//