

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 May 2025

DOCKET NUMBER: AR20240011873

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

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record), 25 September 1990.

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 acknowledges his separation was the result of his actions on one night during his enlistment. Up until that night he had been a squared away Soldier with no major incidents on his record. He feels that because the other Soldier involved had a history of documented behavior incidents that he was presented with a plea agreement for prosecution and the discharge was not merited.
3. A review of the applicant's service record shows the following:
 - a. On 25 September 1990, he enlisted in the Regular Army.
 - b. On 2 September 1992, his first sergeant counseled him for being drunk on duty while serving as a sentinel, misbehavior of a sentinel on lookout, and unlawful escort. He was administered a breathalyzer registering .129 blood alcohol concentration. His first sergeant was recommending to his battery commander that he be referred for courts-martial.
 - c. On 2 September 1992, he was flagged for an adverse action.
 - d. On the same date, the staff judge advocate (SJA) noted in a memorandum for record that the company, battalion, and brigade commanders recommended referral of the charges for court-martial.

e. Court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ). The DD Form 458 (Charge Sheet) and his request for discharge in lieu of trial by court-martial under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), chapter 10, are not available for review.

f. On 13 October 1992, the SJA noted the company, battalion, and brigade commanders recommended approval of the applicant's request for discharge under the provisions of Army Regulation 635-200, chapter 10.

g. The separation authority memorandum approving his request for discharge is not available.

h. On 26 October 1992, he was reassigned to the U.S. Army Transition Point for separation processing with a date of discharge of 9 November 1992.

i. On 10 November 1992, he was discharged. His DD Form 214 (Certificate of Release 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 trial by court-martial, with a character of service of under other than honorable conditions. It further reflects he completed 2 years, 1 month, and 16 days of net active service. His rank was private/E-1.

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:

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 pending court-martial charges for being drunk on duty while serving as a sentinel, misbehavior of a sentinel on lookout, and unlawful escort. He was administered a breathalyzer registering .129 blood alcohol concentration.

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. The Board noted the applicant's serious misconduct and found the applicant did not provide any supporting documentation to mitigate his conduct or for consideration for clemency. 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 and denied relief.

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 correction of the records of the individual concerned.

X //SIGNED//

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.

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.

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//