

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 May 2025

DOCKET NUMBER: AR20240011910

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), 19 July 2024
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 19 July 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 is homeless, living in a shelter, and knows with an upgrade of his character of service he will be able to obtain the help he requires. After his discharge, he got sober, had a house fire, and had to restart his life.
3. A review of the applicant's service records show the following:
 - a. He enlisted in the Regular Army on 24 June 1977, he reenlisted on 26 February 1981, for an additional 3-year period.
 - b. He received non-judicial punishments on:
 - 11 September 1980, for on or about 31 August 1980 failing to go to his prescribed appointed place of duty and for on or about 15 August 1980, for disobeying a lawful command
 - 17 August 1981, for on or about 5 August 1981 disobeying a lawful order, he was reduced to private first class/E-3

- 24 September 1982, for on or about 18 September 1982 operating a military bus while drunk, he was reduced to E-1 (void of continuation sheet)

c. On 8 October 1982, court martial charges were preferred against him for violations of the Uniform Code of Military Justice (UCMJ) for:

- on or about 1 October 1982, for wrongfully communicating a threat (two specifications)
- on or about 30 September 1982, breaking restriction
- on or about 30 September 1982, wrongfully appearing for duty without his uniform cap
- on or about 1 October 1982, behaving himself with disrespect towards his superior commissioned officer
- on or about 30 September 1982, disobeying a lawful command
- on or about 1 October 1982, being disrespectful in language towards his superior noncommissioned officer
- on or about 30 September 1982, for disobeying a lawful order
- on or about 30 September 1982, for being disorderly in a public place while in uniform

d. He consulted with legal counsel on 19 October 1982. 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 under conditions other than honorable 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.

e. His immediate and intermediate commander's recommended approval of his request for discharge for the good of the service and further recommended issuance of an UOTHC discharge.

f. The separation authority approved his request for discharge on 21 October 1982 and directed he be issued a DD Form 794A (UOTHC Discharge Certificate).

g. He was discharged accordingly on 25 October 1982, under the provisions of AR 635-200, Chapter 10, in the grade of E-1. His DD Form 214 (Certificate of Release or Discharge) shows his service was characterized as UOTHC. He served 1 year, 7 months, and 3 days of net active service with 3 years, 8 months, and 2 days of total prior active service. He had time lost from:

- from 31 May 1981 to 11 June 1981
- from 15 July 1981 to 16 July 1981
- from 18 September 1982 to 20 September 1982
- from 16 October 1982 to 25 October 1982

4. In reaching its determination, the Board can consider the applicant's petition and his 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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. The evidence of record establishes that the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) for multiple incidents of misconduct. In addition, court-martial charges were preferred against the applicant for further misconduct. Following these disciplinary actions, the applicant's commander-initiated separation proceedings.

2. The applicant consulted with legal counsel and voluntarily requested discharge under the provisions of Army Regulation (AR) 635-200, chapter 10, in lieu of trial by court-martial. under AR 635-200, chapter 10. The applicant's record demonstrates compliance with these requirements. The Board noted that the applicant's repeated misconduct, documented through NJPs and court-martial charges, provided sufficient grounds for separation. The voluntary nature of the applicant's request, coupled with the

absence of procedural error, supports the validity of the discharge. Therefore, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 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//