

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 September 2025

DOCKET NUMBER: AR20250000773

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions to under honorable conditions (General).
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement

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 requests a correction to his military discharge status and DD Form 214 to reflect an under honorable conditions (General) discharge. He was harassed and bullied. In 1984, he used a phone calling card number without knowing it belonged to another Soldier. All Soldiers involved paid the bill in full and the owner did not press charges. The first sergeant (1SG) continued to push the situation, leading one private to take a Chapter 10 to avoid court martial. He was interviewed by CID on a few different occasions, but never charged or arrested. He believes the 1SG's persistence influenced the outcome of the situation and it might have been different if they were white. He ultimately decided to take the Chapter 10.
3. A review of the applicant's service record shows the following:
 - a. On 12 May 1983, he enlisted in Regular Army on 23 August 1983.

b. A DD Form 498 (Charge Sheet) shows on 23 July 1984 court-martial charges were preferred on the applicant for intent to defraud, falsely pretend to be authorized to charge long distance telephone calls to Mrs. LHM., then knowing that the pretenses were false and unlawfully obtain from Mrs. LHM., services of a value of about \$249.15.

c. On 7 August 1984, the applicant consulted with legal counsel and requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- he was making the request of his own free will
- maximum punishment
- he was guilty of at least one or more of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged Under Other Than Honorable Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many, or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a Veteran under both Federal and State law
- he must apply to the Army Discharge Review Board or the Army Board for the Correction of Military Records for a review of discharge, but there was no automatic upgrading
- he may expect to encounter substantial prejudice in civilian life

f. On 28 August 1984, the separation authority approved the applicant's request for discharge under the provisions of Chapter 10, AR 635-200 for the good of the service. He would be issued an Under Other Than Honorable Discharge Certificate and reduced to the lowest enlisted rank.

g. On 5 September 1984, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year and 13 days of active service with no lost time. It also shows he was awarded or authorized:

- Army Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle Bar M16
- Expert Marksmanship Qualification Badge with Rifle Bar Hand Grenade

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

5. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

6. 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 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 for intent to defraud, falsely pretend to be authorized to charge long distance telephone calls, services of a value of about \$249.15, 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 was convinced by the compelling evidence submitted by the applicant that there was undue command influence and that he was not aware the calling card he used was someone else's; and he paid the money back. Therefore, the Board determined that there was an error or injustice that warranted granting 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
XX	XX	XX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 5 September 1984 to show in item 24 (Character of Service): General Discharge.

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 15-185 (ABCMR) 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, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. 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 or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. 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.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 (Discharge for the Good of the Service) applied to Soldiers who had committed an offense or offenses for which the punishment under the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial (MCM) included a punitive (i.e. bad conduct or dishonorable) discharge.

(1) Soldiers could voluntarily request discharge upon the preferral of court-martial charges; commanders were responsible for ensuring such requests were personal decisions, made without coercion, and following access to counsel. The Soldier was to be given a reasonable amount of time to consult with counsel prior to making his/her decision.

(2) The Soldier was required to make his/her request in writing, which certified he/she had been counseled; understood his/her rights; could receive an under other than honorable conditions character of service; and recognized the adverse nature of such a character of service.

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs 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.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//