

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 October 2023

DOCKET NUMBER: AR20220011061

APPLICANT REQUESTS: upgrade of his under other than honorable conditions discharge, a change to the narrative reason for separation, and correction of the corresponding Separation and Reentry Codes.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) ending on 15 March 1984
- DD Form 214 ending on 2 April 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 has been service-connected since 1983. He was not a troublemaker. He was a good Soldier. He was on leave and did not go back the Army sent him to Germany. He is sorry. He did not know.
3. Review of the applicant's service records shows:
 - a. Having had prior service in the Army National Guard, he enlisted in the Regular Army on 3 March 1988. He served in Germany from 10 July 1989 to on or about 17 October 1989.
 - b. DA Forms 4187 (Personnel Action) show his duty status was changed from leave to absent without leave (AWOL) on 17 October 1989. Additionally, he was dropped from the rolls as a deserter on 17 November 1989.

c. He surrendered to military control at Fort Campbell, KY on 4 January 1990 and was assigned to Personnel Control Facility, Fort Knox, KY for disposition of his case.

d. On 18 January 1990, court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of AWOL from 17 October 1989 to 4 January 1990.

e. On 19 January 1990, the applicant consulted with legal counsel. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice (UCMJ), the possible effects of an under other than honorable conditions discharge, and the procedures and rights that were available to him. After receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, in lieu of court-martial. In his request for discharge, the applicant stated/acknowledged/understood:

(1) He stated he was making this request of his own free will and had not been subjected to any coercion whatsoever by any person. He has been advised of the implications that are attached to it.

(2) He acknowledged that by submitting this request for discharge, he understood the elements of the offenses charged and that he was guilty of the charges against him or of a lesser offense which also authorizes the imposition of a bad conduct or dishonorable discharge.

(3) He stated that under no circumstances does he desire further rehabilitation, for he has no desire to perform further military service.

(4) He acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

(5) He elected not to submit a statement in his own behalf, and he also elected not to undergo a physical evaluation prior to separation.

f. The applicant's immediate commander recommended approval. He stated the applicant's conduct has rendered him triable by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge. Based on his previous record, punishment can be expected to have a minimal rehabilitative effect. The commander believed a discharge at this time to be in the best interest of all concerned and that there

did not appear to be any reasonable ground to believe that the individual is, or was, at the time of his misconduct, mentally defective, deranged, or abnormal.

g. On 5 March 1990, the separation authority approved the applicant's request for discharge, under the provisions of AR 635-200, Chapter 10, in lieu of court-martial, and directed his reduction to the lowest enlisted grade, if applicable, and the issuance of a under other than honorable conditions discharge.

h. The applicant was discharged on 2 April 1990. His DD Form 214 confirms he was discharged in the lowest enlisted grade under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial (Separation Code KFS, Reentry Code 3) and his service was characterized as under other than honorable conditions. His DD Form 214 shows he completed 1 year, 10 months, and 13 days of active service, with 75 days of excess leave and with lost time from 17 October 1989 to 3 January 1990.

i. There is no indication he petitioned the Army Discharge Review Board for a review of his discharge within that board's 15-year statute of limitations.

4. By regulation (AR 635-200), Chapter 10, 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. A discharge under other than honorable conditions is normally considered appropriate.

5. 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.

6. By regulation (AR 635-5-1), Separation Code KFS is the correct Separation Code assigned to Soldiers being separated under chapter 10 of AR 635-200 by reason of In Lieu of Trial by Court-Martial.

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 DoD guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement that he knowingly, willingly, and voluntarily declared he was AWOL during the period for which he being charged. After due consideration of the request, the Board determined the evidence presented insufficient to warrant a recommendation for relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined 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.



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) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides 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.

a. Paragraph 3-7a states that 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.

b. Paragraph 3-7b states that 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/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. 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 based on 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. 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//