

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 December 2023

DOCKET NUMBER: AR20230005568

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to honorable.

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

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 would like his under other than honorable discharge changed to reflect an honorable, if possible. He would like to obtain benefits from the Department of Veterans Affairs (VA) for his extreme hearing loss and ringing in his ears that resulted from his service with the Army. He has trouble with hearing due to the poor ear protection at the time of his active service in the Army.
3. A review of the applicant's service record shows:
  - a. Having had prior service in the U.S. Army Reserve, he enlisted in the Regular Army on 27 July 2000.
  - b. Two DD Forms 458 (Charge Sheet) dated 18 April 2002 and 13 May 2002, show court-martial charges were preferred on the applicant for:
    - nine specifications of failure to go to his appointed place of duty between 4 December 2001 and 7 May 2002
    - one specification of disrespect to a superior commissioned officer on 3 May 2002
    - five specifications of willfully disobeying lawful orders from a commissioned officer to sign out with the CQ on the log if he left the barracks, between on or about 26 April 2002 and 1 May 2002

- two specifications of being disrespectful in deportment towards a superior noncommissioned officer on 6 December 2001 and on 11 December 2001
- one specification of wrongfully consuming alcohol while underage on 8 February 2001
- one specification of wrongfully using provoking words towards another Soldier on 18 February 2002
- one specification of stealing property valued at \$130.00 from another Soldier on or about 19 September 2001
- two specifications of wrongfully and unlawfully making and uttering two checks; one in the amount of \$150.00, and another in the amount of \$200.00; knowing he did not have sufficient funds in the account
- one specification of dishonorably failing to pay a debt on or about 22 July 2001, in the amount of \$243.00
- one specification of dishonorably failing to pay a debt on or about 8 February 2002, in the amount of \$1005.91

d. On 23 April 2002, the applicant consulted with legal counsel and requested a discharge in lieu of trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. The applicant's rank was listed as specialist private (PVT)/E-1. 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 conditions other than honorable
- 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

e. On 4 June 2002, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He would be issued an Under Other Than Honorable Conditions Discharge Certificate.

f. Orders 163-0241, dated 12 June 2002, discharged the applicant from active duty with an effective date of 18 June 2002.

g. On 18 June 2002, 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 10 months, and 22 days of active service. He was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial," with reentry code 4. It also shows he was awarded or authorized: National Defense Service Medal and Army Service Ribbon.

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

9. By regulation (AR 635-5), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

10. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

11. 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.

12. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 18 June 2002 discharge characterized as under other than honorable conditions. He states: I would like my Other Than Honorable Discharge to be changed to an Honorable Discharge if possible. Mainly so I can go to the VA Clinic to help with my extreme hearing loss and ringing in my ears due to my service with the Army."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the Regular Army on 27 July 2000 and was discharged on 18 June 2002 under the separation authority provided chapter 10 of AR 635-200, Active Duty Enlisted Administrative Separations (1 November 2000): Discharge in Lieu of Trial by Court-Martial. The DD 214 does not contain a period of Service in a hazardous duty pay area.

d. The applicant's Charge Sheets (DD form 458) shows the applicant was charged with 24 specified charges. On 23 April 2002, the applicant voluntarily requested discharge in lieu of trial by court-martial under chapter 10 of AR 635-200:

I, PVT [Applicant], hereby voluntarily request discharge in lieu of trial by court-martial under AR 635-200, chapter 10. I understand that I may request discharge in lieu of trial by court-martial because of the following charges which have been preferred against me under the Uniform Code of Military Justice, one of which or a combination of which authorizes the imposition of a bad conduct or dishonorable discharge:

Article 86 - Failure to repair.

Article 91 - Disrespect to a superior noncommissioned officer.

Article 92 - Underage drinking.

Article 11 7 - Provoking speeches or gestures.

Article 121 - Larceny.

Article 123a - Making, drawing, or uttering a check without sufficient funds.

Article 134 - Dishonorably failing to pay debt.

e. The Commanding General of III Corp and Fort Hood approved his request on 4 June 2002 with the directive the applicant be discharged with an under other than honorable characterization of service.

f. No medical documentation was submitted with the application. There are no encounters in AHLTA or in JLV. There is no evidence the applicant had a mental health or other medical condition which would have then contributed to or would now mitigate his 24 UCMJ violations and thereby warrant consideration of a discharge upgrade.

#### 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 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 commission of an offense (failure to go to his appointed place of duty, disrespect, disobeying orders, wrongfully consuming alcohol while underage, using provoking words, theft, writing and checks, and dishonorably failing to pay a debt). Such offenses are punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial. The Board reviewed and agreed with the medical official's finding no evidence the applicant had a mental health or other medical condition which would have then contributed to or would now mitigate his violations and thereby warrant consideration of a discharge upgrade. Additionally, the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	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.

[REDACTED]

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[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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

3. Army Regulation 635-5 (Separation Documents, in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

4. 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. Paragraph 3-7a (Honorable Discharge) states 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. Paragraph 3-7b (General Discharge) states 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 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

d. Paragraph 10–6. Medical and mental examination provides that a medical examination is not required but may be requested by the Soldier under AR 40–501, chapter 8.

5. 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.

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 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.

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.

6. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//