

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 February 2024

DOCKET NUMBER: AR20230007127

APPLICANT REQUESTS: in effect, an upgrade of his under other than honorable conditions character of service.

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

- DD Form 149 (Application for Correction of Military Record)
- VA Form 21-4142 (Authorization to Disclose Information to the Department of Veterans Affairs (VA)), 3 April 2023
- VA Form 21-4142a (General Release for Medical Provider Information to the VA) undated
- VA Form 21-4138 (Statement in Support of Claim), 10 April 2023

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 was falsely accused of being absent without leave (AWOL) and there are zero military police records of this incident. His company commander prepared paperwork to separate him because he took 3 days leave to move his pregnant wife from Virginia to Wyoming as they lost their off posting housing and had limited time due to a hardship tour for training.
3. The applicant enlisted in the Regular Army on 24 October 1997 and reenlisted on 1 March 2000.
4. The applicant was reported AWOL effective 0530 hours, 3 October 2000 through 1300 hours, 5 October 2000. He accepted non-judicial punishment for being AWOL on 5 October 2000.

5. The applicant was reported AWOL effective 1330 hours on 12 October 2000. On 13 October 2000, he was erroneously declared a deserter and charges were preferred against him for his AWOL status.
6. The applicant returned to his unit on 16 October 2000
7. The applicant was reported AWOL effective 18 October 2000. Charges were preferred against him for his AWOL status.
8. The applicant surrendered to military authorities on 6 November 2000.
9. The applicant was reported AWOL effective 9 November 2000; on 12 December 2000, charges were preferred against him again.
10. The applicant surrendered to military authorities on 24 October 2001.
11. On 8 November 2001 charges were preferred against him for his AWOL status from 3 October 2000 to 5 October 2000; 18 October 2000 to 9 November 2000; and 9 November 2000 to 24 October 2001.
12. On 8 November 2001, the applicant submitted a request for discharge in lieu of trial by courts-martial. He acknowledged:
 - he made this request of his own free will and had not been subjected to any coercion whatsoever by any person
 - had been advised of the implications attached to it
 - he is guilty of his charges
 - does not desire further rehabilitation, and
 - has no desire to perform further military service
 - had been afforded the opportunity to consult with counsel
 - had been advised of his rights
 - if approved he would receive an under other than honorable character of service
 - he may submit statements on his own behalf
13. On 14 January 2002, the applicant's commanding officer recommended the approval of the applicant's request for separation.
14. On 22 February 2002, the applicant's request was approved.
15. The applicant was discharged on 21 March 2002 under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, in lieu of trial by court-martial with a character of service of under other than honorable

conditions. His DD Form 214 (Certificate of Release or Discharge for Active Duty) shows continuous honorable service from 24 October 1997 to 29 February 2000.

13. The applicant provided a statement of support from his spouse, EAL. It states:

In November 2000, they were stationed at Fort Eustis, VA while the applicant trained as an Apache mechanic. They were staying in temporary housing waiting for a bigger place as she was pregnant. At that time, she lost her job, then they lost their apartment. They decided she should go to her parents' home in Wyoming while he tried to sort it out. They were given 3 days to move; he requested additional leave and was denied. On the way to Wyoming, she miscarried. He came to help her through it and was declared AWOL. Once they got past the grief, they made their way home to Missouri. She got pregnant again, and he went to Kentucky to get his official discharge from the Army.

14. The applicant provided argument or evidence that the Board should consider in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The Board thoroughly reviewed the applicant's request to upgrade his characterization of service, his supporting documents, his statement, the evidence in his service records, and the published Department of Defense guidance for consideration of discharge upgrade requests and for liberal consideration of discharge upgrade requests. After carefully considering the afore mentioned, the Board determined relief was not warranted.
2. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination.
3. The Board notes the applicant's arguments/statements regarding the requirement to move his wife, and her subsequent unfortunate miscarriage. He should have gone back to his unit to again request leave instead of going AWOL for such a long period.
4. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

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

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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. AR 635-200 (Personnel Separations - Enlisted Personnel) sets 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. Readiness is promoted by maintaining high standards of conduct and performance.

a. Paragraph 3-7a. 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.

b. Paragraph 3-7b.(1). 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.

c. Chapter 10 (Discharge in Lieu of Trial by Court-Martial) states a soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the manual for courts-martial (MCM) 1998 includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.

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.

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//