

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 January 2024

DOCKET NUMBER: AR20230007129

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 10 March 1998
- Army Discharge Review Board (ADRB) Letter, dated 13 November 2014
- Eight Letters of Support

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 requesting an upgrade of his discharge due to the erroneous dates identified for his absence without leave (AWOL) charges. The correct dates are 8 August 1997 to 12 September 1997 and 12 November 1997 to 24 [November] 1997.

a. He arrived at airborne school in August 1997 after successfully completing basic training and medic school. He went through airborne school three times which led to difficulty with his walking. He was told he would be a hold over and to wait for further instruction. On 8 August 1997, he received permission to attend a funeral in Chicago and he was gone less than a week. Upon his return he found out the staff sergeant (SSG) that gave him permission to go left for officer candidate school (OCS) and he

was written up as a result. He was then told to report to a holding company down the street to await orders transferring him to the medical battalion. He was told to stand guard at the door until relieved. When he arrived and at approximately 2 am a drunk SSG showed up asking him who he was cursing at, what he was doing there, and attempted to beat him up. He defended himself and the SSG grabbed a baseball bat and told him if he ever saw him again, he would kill him. He grabbed his bags and left to return to his old company.

b. The following morning, he asked for help and was told to go back to the holding company and he did not care what happened. He did not know what to do and he was young and scared. He went to see the chaplain, but he was not there. He then went and got a hotel for a week where he was able to think, but he did not receive any help. He did return to the unit and upon arrival the military police were called. He was then informed he would have an opportunity to tell his story there and receive the medical attention he needed at Fort Knox, where he would be transferred. The whole time he was being told he was fine, and he was not, he could not walk. He had been a star athlete prior to joining the Army, excelled in sports and academics. He was not a quitter and joined the Army to win; however, they lied to him like when he broke his hips in medic school. He jumped over a wall, his legs made a loud crack, he hit his head and began having seizures. He was placed on seizure medication, and it was brushed off. He did not want to be a medical hold over, he just wanted medical attention.

c. He came from a long line of service, Captain T\_\_ D\_\_, killed in action, and had hoped to continue the family legacy of service. He maxed out every physical fitness test but began having problems with shin splints and when he attempted to get out of airborne school, they would not let him. SSG L\_\_ told him he was signing the papers for him to drop and to just get it done. He expressed his concerns due to his health but was told he had to go. He was injured within a week of arriving and was placed on so many pain killers and Motrin it tore holes in his stomach, and he now suffers from Crohn's Disease and irritable bowel syndrome. He was a good Soldier and had no intentions on dishonoring his father. He did receive permission to attend his uncle's funeral. He is still really upset about this and his friends at the Disabled American Veterans (DAV) are helping him. He has had multiple surgeries on his knees and back. He now has a plate in his neck and has constant pain in his legs.

d. He has been an admissions advisor and has changed the lives of thousands of students and people who need help. He is also the military advisor assisting military personnel through their transition into civilian life and entering college. He has served as the Director, Kaplan University, Chicago and in numerous other roles helping his community and serving his county honorably. His personnel files only made it look like he ran away with no mention of his injuries and that was not the case, he was young, and he made a mistake. He should have demanded help. He asks that his discharge be upgraded to allow him to move on with his life and allow him to feel whole again.

3. The applicant provides:

a. A letter from the ADRB, dated 13 November 2014, notified the applicant his request must be directed to the ABCMR. The ADRB does not have the authority to process applications received after 15 years from the date of discharge.

b. Eight letters of support describe the applicant as professional, hardworking, dedicated, displayed integrity, leadership, respect, and contributed to a positive working environment. He overcame challenges with dyslexia, went on to college, and to assist others in their journey to further their education. He was an excellent role model, he made great strides in his life, and he deserves a second chance.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 5 March 1997.

b. Five DA Forms 4187 (Personnel Action) lists the applicant's duty status as follows:

- 8 August 1997 – Present for Duty (PDY) to AWOL
- 12 September 1997 – AWOL to PDY
- 12 November 1997 – PDY to AWOL
- 19 November 1997 – AWOL to Dropped from Rolls (DFR)
- 24 November 1997 – DFR to PDY

c. A DD Form 458 (Charge Sheet) shows on 26 November 1997, court-martial charges were preferred on the applicant for two specifications of being AWOL from on or about 8 August 1997 to on or about 12 September 1997 and from on or about 12 November 1997 to on or about 24 November 1997.

d. On 28 November 1997, after consulting with legal counsel he requested a discharge in lieu of trial by courts-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- maximum punishment
- he was guilty 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 conditions
- 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 may expect to encounter substantial prejudice in civilian life
- he elected to submit matters

e. The applicant noted in his statement he was requesting a general discharge. He had seizures all of his life but wanted to be an Airborne Ranger and joined the Army anyway trying to hide it. He made it to airborne school but was recycled several times, it broke his heart, and he had a nervous breakdown. He headed home and after speaking with his dad, a former ranger in Vietnam, he was convinced to return. Upon return, he spoke with his Sergeant Major and was told he was squared away, and he would drop the whole thing. He received medical attention where he received Motrin for his knees, he was informed they found shattered bones in his knees, and he would have to be prescribed medication for his seizures. He was also notified that he no longer qualified for airborne/ranger school. He was sent to a medical holding company and elected to go home again after being treated like a loser. He returned to face his punishment after being gone 11 days for what he believed would be jail time.

f. On 20 February 1998, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge in lieu of trial by courts-martial under the provisions of AR 635-200, Chapter 10. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

g. On 10 March 1998, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 10 months and 19 days of active service with lost time from 8 August 1998 to 11 September 1997 and from 12 November 1997 to 23 November 1997. He was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Trial b Court-Martial," with reentry code 3. It also shows he was awarded or authorized:

- Marksman Marksmanship Qualification Badge with Rifle Bar (M16)
- Marksman Marksmanship Qualification Badge with Hand Grenade Bar

5. 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.

6. 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.

7. 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 in lieu of trial by court-martial. An Under Other than

Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

8. 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. 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.

2. After reviewing the application and all supporting documents, the Board found 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. Documentation available for review, shows the applicant's periods of AWOL as reflected on the supporting DA Forms 4787. Although the applicant contends they are error other than those dates submitted in consideration of the request, documentation available for Board consideration does not reflect the requested dates. After due consideration of the applicant's request, the Board determined the evidence presented does not meet the burden of proof in determining the existence of an error or injustice and a recommendation for relief is not warranted.

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 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.

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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. Army Regulation (AR) 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.

3. AR 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 in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

4. 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.

//NOTHING FOLLOWS//