

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 9 February 2024

DOCKET NUMBER: AR20230007378

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable
- 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)
- Certificate of Meritorious Completion, U.S. Army Signal Center, dated 5 March 1990
- DD Form 256A (Honorable Discharge Certificate), dated 25 February 1993
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 7 April 1995

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 served an honorable period of service and reenlisted for 2 more years. He had an unexpected issue resulting in a disruption of his pay for more than 6 months. He had a baby on the way and went absent without leave (AWOL) to feed his family. His commander told him his discharge would be upgraded after 6 months.
3. The applicant enlisted in the Regular Army on 5 October 1989. The highest rank he attained was specialist/E-4.
4. A DD Form 256A shows he was honorably discharged on 25 February 1993. His record is void of any documentation pertaining to his reenlistment.

5. Three DA Forms 4187 (Personnel Action) show the following changes in the applicant's duty status:

- Present for Duty (PDY) to AWOL on 7 June 1993
- AWOL to Dropped from the Rolls (DFR) on 7 July 1993
- DFR to PDY on 12 December 1994

6. A DD Form 616 (Report of Return of Absentee) shows the applicant was apprehended by civil authorities and returned to military control on 12 December 1994.

7. Court-martial charges were preferred against the applicant for a violation of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows he was charged with AWOL, from on or about 7 June 1993 until on or about 20 December 1994.

8. A Personnel Control Facility Interview Sheet, dated 22 December 1994, shows the applicant stated, in effect, he requested a chapter during his tour in Panama. He was having marital and financial issues. He could not support his family with his paycheck, so he went AWOL. He spoke with his chain of command, to include the chaplain, while he was in Panama. He did not speak with anyone about it when he got to Fort Riley.

9. The applicant consulted with legal counsel on or about 22 December 1994.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the UCMJ, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged his understanding that by requesting a discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged making this request free of coercion. He further acknowledged understanding that if his discharge request were 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.

c. He was advised he could submit any statements he desired in his behalf. In a self-authored statement, he stated, in effect, he went AWOL because he could not financially support his family. He had family problems after his wife and son went back to the United States while he was in Panama. He spoke to his chain of command and the chaplain. He could not get any assistance. He reenlisted while he was in Panama.

10. The applicant's immediate and intermediate commanders recommended approval of the requested discharge and further recommended the applicant be separated with a UOTHC characterization of service.

11. The separation authority approved the applicant's requested discharge on 10 March 1995 and further directed the applicant be reduced to the lowest enlisted grade and the issuance of an OTH Discharge Certificate.

12. The applicant was discharged on 7 April 1995, under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. His DD Form 214 shows his character of service was UOTHC, with separation code KFS and reentry code 3. He was credited with 3 years, 11 months, and 19 days of active service, with lost time from 7 June 1993 to 20 December 1994. He was awarded or authorized the:

- Army Achievement Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Driver and Mechanics Badge

13. The applicant provides a copy of his Honor Graduate Certificate from the Combat Signaler Course, dated 5 March 1990, and a copy of his DD Form 256A, dated 25 February 1993.

14. Administrative separations under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

15. In reaching its determination, the Board can consider the applicants 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 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 noted the applicant's specific contention that he was advised by his commander that his discharge would be upgraded after 6 months, however, based on a preponderance of the evidence, the Board determined the characterization of service the applicant received upon separation was not in error or unjust.

2. The applicant's request for a video/telephonic appearance was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a video/telephonic appearance 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>	
:	:	:	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]

[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 (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 regulation provides the ABCMR may, in its discretion, hold a hearing. 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, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, 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.

b. 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.

c. 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.

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/NR) 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-

marital; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

//NOTHING FOLLOWS//