

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 April 2024

DOCKET NUMBER: AR20230009826

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), Item 26 (Separation Code) to show a different Separation Program Designator (SPD) Code, presumably more favorable.

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 149 (Application for Correction of Military Record), with self-authored statement

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, in effect, his commander and first sergeant (1SG) used to make fun of him for being overweight. It got so bad he stopped going to the chow hall. He passed all of his physical fitness and body fat tests. While he was out in the field, he found out his wife was in jail. His platoon sergeant took him home. He was allowed to stay and was told to check in with the charge of quarters. For three days, they did not have a ride back for him. On the third day, when he arrived on post, he was told to report to the dining facility for "kitchen patrol." He asked if he was in trouble. The Army did not care about him or his family.

3. The applicant enlisted in the Regular Army on 2 September 1993 for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty

11B (Infantryman). He reenlisted on 14 February 1996. The highest rank he attained was specialist/E-4.

4. Four DA Forms 4187-E (Personnel Action) show the following changes in his duty status:

- Present for Duty (PDY) to Absent without Leave (AWOL) on 5 December 1996
- AWOL to PDY on 7 December 1996
- PDY to AWOL on 27 December 1996
- AWOL to Dropped from the Rolls on 14 January 1997

5. The applicant was apprehended by civilian authorities on 6 March 1997, at Hopkinsville, KY. He was returned to military control on the same date.

6. Court-martial charges were preferred against the applicant for a violation of the Uniform Code of Military Justice (UCMJ), on 11 March 1997. The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL, from on or about 27 December 1996 until on or about 6 March 1997.

9. The applicant consulted with legal counsel on 11 March 1997.

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, in lieu of trial by court-martial, under the provision 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. He elected not to submit a statement.

10. The applicant's service record is void of documentation showing his immediate or intermediate commanders' recommendations regarding his request for discharge.

11. The separation authority approved the applicant's requested discharge, in lieu of trial by court-martial, on 15 May 1997 and further directed the applicant be reduced to the lowest enlisted grade and the issuance of an UOTHC discharge.

12. The applicant was discharged on 11 June 1997, under the provisions of AR 635-200, Chapter 10, by reason of in lieu of trial by court-martial. His DD Form 214 confirms his character of service was UOTHC, with separation code KFS and reentry code RE-3. He was credited with 3 years, 6 months, and 29 days of net active service, with lost time from 5 December 1996 to 6 December 1996 and 27 December 1996 to 5 March 1997. He was awarded or authorized the following: National Defense Service Medal, Army Service Ribbon, and Air Assault Badge. The Remarks block listed his immediate reenlistment and continuous honorable service.

13. 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 trial by court-martial. Regulatory guidance provides when an individual is discharged under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial, "KFS" is the appropriate separation code.

14. 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.

15. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

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.

a. The applicant was charged with commission of an offense punishable under the UCMJ with a punitive discharge (AWOL). 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 and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination.

b. The Board noted that the applicant’s narrative reason for separation was assigned based on the fact that after he went AWOL and after he had court-martial charges preferred against him, he chose to be voluntarily discharged under chapter 10 in lieu of trial by a court-martial. The underlying reason for his discharge was his AWOL and subsequent voluntary request for discharge in lieu of the court-martial. The only valid narrative reason for separation permitted under chapter 10 is “In Lieu of trial by a court-martial” and the appropriate separation code associated with this discharge for enlisted Soldiers is KFS.

c. Based on a preponderance of evidence, the Board determined that the character of service and the Separation Code the applicant received upon separation were 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.

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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, USC, 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 635-5 (Separation Documents), in effect at the time, prescribed the separation documents that must be prepared for Soldiers at the time of retirement, discharge, or release from active duty service or control of the Active Army. It established standardized policy for preparing and distributing the DD Form 214. 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.
3. AR 635-5-1 (SPD) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code "KFS" is the appropriate code to assign to Soldiers separated under the provisions of AR 635-200, Chapter 10, for the good of the service – in lieu of court-martial.
4. AR 635-200, 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.

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

//NOTHING FOLLOWS//