

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]
[REDACTED]

BOARD DATE: 22 May 2024

DOCKET NUMBER: AR20230010407

APPLICANT REQUESTS: through counsel, reconsideration of his previous request for an upgrade of his discharge under other than honorable conditions.

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

- Counsel Letter, 7 July 2023
- Commonwealth of Virginia Executive Department Order, 19 February 2015
- Commonwealth of Virginia Letter, undated
- County Circuit Court Order, 24 May 2023
- Army Board for Correction of Military Records (ABCMR) Record of Proceedings, Docket Number AR2030000270, 26 July 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 1 May 1987
- County Circuit Court Order of Name Change, 25 August 2006

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20230000270 on 26 July 2023.
2. The applicant defers to counsel.
3. Counsel states the applicant's request for an upgrade of his discharge under other than honorable conditions should be reconsidered based on restoration of civil rights and his right to carry firearms that was not previously provided for consideration.
4. The applicant enlisted in the U.S. Army Reserve under the Delayed Entry/Enlistment Program for a period of 8 years on 20 August 1984 with an obligation to enlist in the Regular Army by 16 October 1984 for a period of 4 years. He was discharged from the Delayed Entry/Enlistment Program and enlisted in the Regular Army in the rank/grade

of private two/E-2 on 14 September 1984. He was advanced to the rank/grade of private first class/E-3 on 14 September 1985.

5. The DA Form 4187 (Personnel Action), 26 September 1985, shows the applicant's unit reported his duty status changed from present for duty to confined by civil authorities effective 25 September 1985. Section IV (Remarks) states: "SM [service member] placed in CCA [confinement by civil authorities] at Liberty County Jail."

6. The applicant's records do not contain a DA Form 4187 changing his duty status from confined by civil authorities to present for duty.

7. The applicant's records contain seven additional DA Forms 4187 showing:

- on 18 October 1985, he was reported absent without leave (AWOL) effective 16 October 1985
- on 12 November 1985, his duty status changed to present for duty effective 8 November 1985
- on 12 November 1985, his duty status changed to AWOL effective 9 November 1985
- on 15 November 1985, his duty status changed to present for duty effective 13 November 1985
- on 2 December 1985, his duty status changed to AWOL effective 2 December 1985
- on 3 December 1985, his duty status changed to present for duty effective 3 December 1985
- on 13 December 1985, his duty status changed to AWOL effective 12 December 1985

8. The DA Form 4187, 21 February 1986, shows the applicant's unit reported his duty status changed from AWOL to dropped from the unit rolls effective 13 January 1986. Section IV (Remarks) states: "Member was AWOL since 12 Dec[ember] [19]85, 1430 [hours] and dropped from rolls."

9. Section IV of the DA Form 4187, 17 March 1986, corrected the date the applicant was dropped from the unit rolls to read 20 December 1985.

10. Headquarters, U.S. Army Personnel Control Facility, Fort Knox, KY, Orders 36-2, 25 February 1987, assigned the applicant to the Special Processing Company, U.S. Army Personnel Control Facility, U.S. Army Armor Center and Fort Knox, effective 13 August 1986. The additional instructions state he was apprehended by civil authorities on 13 August 1986 for civilian charges of burglary and breaking and entering. He was confined in the Newport News Jail, Newport News, VA, until 18 August 1986 when he was extradited to the Liberty County Jail, Hinesville, GA. He appeared in

Liberty County Superior Court, Hinesville, GA, on 24 October 1986 and was sentenced to 5 years of probation, fined \$1,050.00, and sentenced to 90 days in the Dodge Correctional Institution, Chester, GA. His expected release date was 8 March 1987.

11. The DA Form 4187, 26 September 1985, shows the applicant's unit reported his duty status changed from confined by civil authorities to present for duty effective 8 March 1987. Section IV (Remarks) states: "On 8 Mar[ch] [19]87 Soldier completed sentence and returned to military control at Chester, GA same date. Soldier joined Special Processing Company, this sta[tion] on 12 Mar[ch] [19]87."

12. The Headquarters, Personnel Control Facility memorandum from the applicant (Admission of AWOL for Administrative Purpose), 17 March 1987, states:

a. He waives all defenses that may have become known had his defense counsel been able to review his records.

b. He knowingly, willingly, and voluntarily declares that he was AWOL from the U.S. Army from 12 December 1985 to 8 March 1987. He makes this admission for administrative purposes only so he may process out of the Army and realizes in doing so that he may be given an other than honorable discharge.

c. He further declares that his military defense counsel has explained to him all the legal and social ramifications of that type of discharge to his complete understanding and satisfaction and what it will mean to him in the future.

13. The DD Form 458 (Charge Sheet), 17 March 1987, shows the applicant was charged with one specification of absenting himself from his organization without authority, to wit: Company A, 2nd Battalion, 34th Infantry Regiment, located at Fort Stewart, GA, on or about 12 December 1985 and remaining so absent until on or about 8 March 1987.

14. On 18 March 1987 after consulting with legal counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. He understood the charge against him was for violation of Article 86 (AWOL), Uniform Code of Military Justice, from 12 December 1985 to 8 March 1987 (a period of 1 year, 2 months, and 25 days). He stated:

a. He is making this request of his own free will and has not been subjected to any coercion whatsoever by any person. By submitting this request for discharge, he acknowledges that he understood the elements of the offense charged and is guilty of the charges against him, which authorizes the imposition of a bad conduct or

dishonorable discharge. Moreover, under no circumstances does he desire further rehabilitation, for he has no desire to perform further military service.

b. He acknowledged he understood that if his discharge request were approved, he could be discharged under other than honorable conditions and furnished an Undesirable Discharge Certificate. He further acknowledged that as a result of such a discharge, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration (now known as the Department of Veterans Affairs), he could be deprived of his rights and benefits as a veteran under both Federal and State laws, and he could expect to encounter substantial prejudice in civilian life by reason of an undesirable discharge. He elected not to submit a statement in his own behalf.

15. The Special Processing Company, U.S. Army Personnel Control Facility, 2nd Armor Training Brigade (Armor Leader), Fort Knox, memorandum from the applicant's company commander (Request for Discharge for the Good of the Service under the Provisions of Army Regulation 635-200), 18 March 1987, states:

a. In accordance with Army Regulation 635-200, paragraph 10-3, the applicant's request for discharge for the good of the service is forwarded for appropriate action.

b. The applicant's conduct has rendered him triable by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge. Based on the applicant's previous record, punishment can be expected to have a minimal rehabilitative effect. He believes a discharge at this time to be in the best interest of all concerned.

c. There does not appear to be any reasonable grounds to believe the applicant is, or was, mentally defective, deranged, or abnormal at the time of his misconduct.

16. On 23 March 1987, the approval authority approved the applicant's request for discharge in lieu of trial by court-martial under the provisions of Army Regulation 635-200, chapter 10. He directed the applicant's reduction to the lowest enlisted grade and characterization of his service as under other than honorable conditions.

17. Headquarters, U.S. Army Personnel Control Facility, Orders 55-5, 24 March 1987, reduced the applicant from the rank/grade of private two/E-2 to private/E-1 effective 23 March 1987.

18. The applicant was discharged accordingly on 1 May 1987. His DD Form 214 shows in:

- item 4a (Grade, Rate, or Rank) – Private

- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 1 year, 3 months, and 25 days
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 25 (Separation Authority) – Army Regulation 635-200, Chapter 10
- item 26 (Separation Code) – KFS (for the good of the service in lieu of trial by court-martial)
- item 27 (Reenlistment Code) – 3B, 3C, and 3 (ineligible for reenlistment without a waiver)
- item 28 (Narrative Reason for Separation) – For the Good of the Service in Lieu of Court-Martial
- item 29 (Dates of Time Lost During This Period) –
 - 16 October 1985-7 November 1985
 - 9 November 1985-12 November 1985
 - 2 December 1985-2 December 1985
 - 12 December 1985-7 March 1987

19. County Circuit Court Order of Name Change, 25 August 2006, ordered the applicant's name change from R____ J. S____ to T____ R.S. W____ consistent with his petition effective the same date.

20. Counsel provided the following documents for consideration:

a. The Commonwealth of Virginia Executive Department Order, 19 February 2015, noted the applicant's convictions of 22 September 2022 and stated the Governor of the State removed the political disabilities by restoring his right to vote, hold public office, serve on a jury, and be a notary public. However, the order did not remove his right to ship, transport, possess or receive firearms.

b. The Commonwealth of Virginia Office of the Governor letter, undated, notified the applicant that the Governor of the State removed all political disabilities imposed as the result of his felony conviction(s) except the right to ship, transport, possess, or receive firearms, which must be restored in accordance with the appropriate Virginia Code, section 18.2-308.2(c).

c. The County Circuit Court Order, 24 May 2023, found, after hearing evidence and argument by his counsel, that the civil rights were restored to him by executive order, 19 February 2015; that he was convicted by the County Circuit Court and has been a contributing member of society; that there are no criminal charges pending against him; and that he has not been convicted of any felony since the grant of executive clemency. The Court granted the applicant permission to possess, transport, and carry a firearm or firearms and ammunition for such firearms, pursuant to Virginia Code, section 18.2-308.2(c).

21. On 26 July 2023 in Docket Number AR20220000270, the ABCMR denied his request to upgrade his discharge under than honorable conditions. Based on the documentary evidence he provided, the Board found there was insufficient evidence to show his any mitigating evidence/factors for his serious misconduct to weight a clemency determination. As a result, the Board concluded there was insufficient evidence of an error or injustice which would warrant relief.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not warranted. The Board through counsel carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review through counsel of the applicant's petition and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of burglary. The Board noted the applicant, nor his counsel provided post service achievements or character letters of support for the Board to weigh a clemency determination.

2. The Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 10 months and 16 days of net service for this period 1 year, 2 months, and 25 days with four (4) separate periods of lost time. The Board agreed the applicant, nor his counsel has demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge. Therefore, the Board denied relief.

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 found 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 to amend the decision of the ABCMR set forth in Docket Number AR20230000270 on 26 July 2023.

[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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Board members will review all applications that are properly before them to determine the existence of an error or injustice and direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. The ABCMR will decide cases on the evidence of record; it is not an investigative body. 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.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), 20 July 1984 and in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7(a) stated 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.

b. Paragraph 3-7(b) stated 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. Paragraph 3-7(c) stated a discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for unfitness, misconduct, homosexuality, security reasons, or for the good of service.

d. Chapter 10 (Discharge for the Good of the Service) provided that a Soldier who committed an offense or offenses for which the authorized punishment included a punitive discharge could submit a request for discharge for the good of the service in lieu of trial by court-martial.

(1) Commanders would ensure that an individual would not be coerced into submitting a request for discharge for the good of the service. The member would be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge.

(2) The request could be submitted at any time after charges were preferred and must have included the individual's admission of guilt.

(3) If the member elected to submit a request for discharge for the good of the service after receiving counseling, he would personally sign a written request certifying that he had been counseled, that he understood his rights, that he may receive a discharge under other than honorable conditions, and that he understood the adverse nature of such a discharge and the possible consequences.

(4) A discharge under other than honorable conditions normally was appropriate for a Soldier who was discharged for the good of the service. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

e. Paragraph 14-4 (Authority for Discharge or Retention) stated upon determination that a member is to be separated with a discharge under other than honorable conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority.

3. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program), 30 January 1987, prescribed eligibility criteria governing the enlistment of persons, with or without prior service, into the Regular Army and the U.S. Army Reserve. Chapter 3 prescribed basic eligibility for prior-service applicants for enlistment and included a table of reenlistment eligibility (RE) codes, in part:

- RE code 3 – persons who are not qualified for continued Army service, but disqualification is waivable – ineligible for reenlistment unless a waiver is granted
- RE code 3B – applies to persons who have lost time during their last period of service – ineligible for enlistment unless a waiver is granted
- RE code 3C – applies to persons who have completed over 4 months of service who do not meet the basic eligibility pay grade requirements – ineligible for enlistment unless a waiver is granted

4. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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//