

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 May 2024

DOCKET NUMBER: AR20230010724

APPLICANT REQUESTS: 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)

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 this characterization of service does not accurately reflect his circumstances. The applicant encountered unexpected car trouble while on his way to formation. Despite this setback, he promptly informed his leadership about the situation. Additionally, he had a medical appointment immediately following his scheduled duty time, which further complicated matters. His leadership was aware of this appointment in advance. Unfortunately, he was still counseled for failing to report to duty. Moreover, during his time in the unit, the applicant states he experienced significant discrimination, particularly from individuals hailing from the local area. Additionally, he states, throughout his service, he strived to be a good Soldier and there were no continuous flagging actions on his part.
3. He enlisted in the Regular Army on 21 February 1984.
4. He accepted nonjudicial punishment (NJP) on 29 October 1985 for three specifications of failing to be at to his appointed placed of duty on or about 6 September 1985, on or about 9 September 1985, and on or about 16 September 1985. His punishment included reduction the grade of private/E-2 (suspended).

5. His record contains several DA Forms 4187 (Personnel Action), reflecting the applicant was absent without leave (AWOL) on the following dates:

- 4 December 1985 – 9 December 1985
- 11 December 1985 – 13 December 1985
- 16 December 1985 – 6 January 1986
- 7 January 1986 – 9 January 1986

6. He accepted NJP on 14 January 1986 for four specifications of being absent without authority on or about 4 December 1985 to on or about 9 December 1985, on or about 11 December 1985 to on or about 13 December 1985, on or about 16 December 1985 to on or about 6 January 1986, and on or about 8 January 1986 [*sic*] to on or about 9 January 1986; and one specification for disobeying an order from a noncommissioned officer on or about 9 December 1985. His punishment included reduction to the rank of private/E-1.

7. On 15 January 1986, the applicant submitted a letter to the battalion commander appealing the 30 days of correctional custody that had been imposed as part of his nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice. In the letter, the applicant explained that he was married and had previously discussed marital issues with both his chain of command and the unit chaplain. He emphasized that his wife was currently in poor physical and mental health, and he needed to be physically present with her. Consequently, the applicant requested an alternate form of punishment that would not separate him from his wife, allowing him to continue caring for her.

8. A DA Form 268 (Report for Suspension of Favorable Personnel Actions) indicates the applicant was flagged for elimination on 22 January 1986. This action was taken in accordance with the provisions outlined in Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13.

9. Two DA Forms 4187, reflect the applicant was AWOL on the following dates:

- 24 January 1986 – 27 January 1986
- 30 January 1986 – 3 February 1986

10. According to DA Forms 4187, on 7 February 1986, the applicant's duty status was modified from present for duty (PDY) to AWOL. On 9 March 1986, the applicant was dropped from the rolls (DFR). The applicant returned to duty on 16 April 1986, changing his duty status back from DFR to PDY.

11. On 16 April 1986, the applicant was apprehended by military authorities at Fort Bragg, NC, as indicated in DA Form 268, dated 21 April 1986. Following the apprehension, the applicant underwent processing and was subsequently released to his unit, where he was pending trial by court-martial.

12. According to DA Forms 4187, the applicant's duty status was modified from PDY to AWOL on 21 April 1986. On 7 May 1986, the applicant returned to duty but was subsequently confined by military authorities due to concerns that he posed a flight risk, given his history of repeated AWOL incidents. The applicant was released from military confinement and returned to duty on 9 May 1986.

13. His service record contains a DD Form 458 (Charge Sheet) indicating that court-martial charges were preferred on the applicant in his absence for one specification of absencing himself with the intent to remain therefrom permanently, on or about 7 February 1986, and did remain so absent in desertion.

14. The DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged from active duty on 27 June 1986 with an under other than honorable conditions characterization of service under the provisions of AR 635-200, Chapter 10. He was assigned separation code KFS and the narrative reason for separation listed is as "For the Good of the Service – In Lieu of Court Martial" with RE code 3; 3B. He completed 2 years and 5 days of active service. It also shows he was awarded or authorized:

- Army Service Ribbon
- Parachute Badge
- Sharpshooter Badge M-16
- Expert Badge with Hand Grenade Bar
- Item 29 (Dates of Time Lost During This Period):
 - 851204 – 851208 (4 December 1985 to 8 December 1985)
 - 851211 – 851212 (11 December 1985 – 12 December 1985)
 - 851216 – 860105 (16 December 1985 – 5 January 1986)
 - 860107 – 860108 (7 January 1986 – 8 January 1986)
 - 860124 – 860126 (24 January 1986 – 26 January 1986)
 - 860130 – 860202 (30 January 1986 – 2 February 1986)
 - 860207 – 080415 (7 February 1986 – 15 April 1986)
 - 860421 – 860506 (21 April 1986 – 6 May 1986)
 - 860507 – 860508 (7 May 1986 – 8 May 1986)

15. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

16. By regulation (AR 635-200), a member who has committed an offense or offenses, the punishment for which, under the UCMJ, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other Than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the Service.

17. 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 contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. The evidence shows no error, no injustice, and the applicant failed to provide any evidence for mitigation or post service accomplishments for the Board to consider and weigh against the application of liberal consideration or clemency.

3. The applicant's separation and characterization of service are correct considering his extended periods of AWOL.

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, 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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. 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. 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 that a member who has committed an offense or offenses, the punishment for which, under the UCMJ and the MCM; 1984, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the Service. An Under Other Than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the Service.

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 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//