

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 June 2024

DOCKET NUMBER: AR20230011261

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- correction of his DD Form 214 (Report of Separation from Active Duty) to show Secretarial Authority and corresponding separation code

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Power of Attorney, 3 November 2021
- Six DA Forms 4187 (Personnel Action)
- Checklist for Screening Records
- Special Orders Number (SO) 243, 18 December 1973
- SO 170, 3 September 1974
- SO 232, 3 December 1974
- SO 042, 2 March 1976
- Memorandum, subject: Request for Discharge for the Good of the Service, 9 March 1976
- SO 064, 1 April 1976
- DA Form 2496 (Disposition Form)
- Church Membership and Directory
- Letter, U.S. Department of Justice, Criminal Information Services, Division of the Federal Bureau of Investigation, dated 15 July 2012
- Two City, North Carolina Newspaper Stories, 1 February 2014 and 2020
- Letter, Board of Commissioners, 1 December 2020
- Letter, Elementary School, 10 December 2021
- Letter of support, 7 February 2022

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, through counsel:

a. The applicant joined the Army in 1974 at 17 years of age to make a better life for himself. He was raised in impoverishment and he did not know his father. He witnessed his mother and sister make poor choices which made their lives difficult. The Army was a way for him to escape desperation and degradation.

b. He completed basic training and he completed airborne training and he was assigned to the 82d Airborne Division. He served as a first gunner of a weapons crew. He was a paratrooper who jumped first out of the aircraft and he handled an M-60 machine gun.

c. While he was in the Army, he met his first wife and they had a son. His wife had mental health issues. With no support system in Fayetteville, he left his unit without permission to take her somewhere safe and stable. He returned to his unit and he was granted leave to continue tending to his family. Financial and emotional stressors in his family increased. He made more money off-post than he did as a Soldier. The authorities eventually apprehended him and returned him to Fort Bragg.

d. After the military he settled in North Carolina and worked various jobs before becoming the head custodian at (city) elementary school. He loved his job, the teachers, the students, and the staff and retired from this position.

e. He has been married to his second wife for more than 3 decades and raised two children. Over 20 years ago he started a food pantry with his second wife and they continue to feed, clothe, nurture, and comfort people in need.

f. He did what he thought was the best for his family at the time. He knows his decision to leave without permission was a mistake. For almost 50 years he has paid the penalty and shouldered the burden of his decision with his discharge.

g. It is the Department of Defense policy to determine whether or not to grant relief on the basis of clemency, equity, or injustice. The Wilkie Memorandum lists eighteen factors for Boards of Correction to consider in reviewing requests for discharge upgrades.

h. He has been candid about his military service. He accepted responsibility then and takes responsibility now for his choices. The collateral consequences of his discharge prevent him from accessing Veteran's benefits.

i. He has been an upstanding citizen, living a law-abiding life, working steadily, supporting his family, raising children, and retiring from his last job. His character in the community is outstanding. He wants to leave his family with peace about his military service. He would like them to have the option to access burial benefits for Veterans if they choose to do so.

j. He and his wife started a food pantry in his church ensuring no child in his community goes to sleep with an empty belly. He volunteers as a trustee for the local fire department, he helps the Boy Scouts, and mentors scouts looking to lead community service initiatives. He also volunteers with an organization of local clubs dedicated to helping others.

k. The resources available today to young Soldiers and their families are vastly superior to those in the 1970s. Pay and allowances are also much better now than they were at the end of Vietnam. Times were different in the 1970s.

3. The applicant states,

a. He regrets and apologizes for the actions leading to his discharge from the Army many years ago. He has lived a full life since then.

b. His childhood was difficult. He raised himself for the most part and at times his little sister too. There were days he went without food and the neighbors did not check on them or know of their situation. He did not know his father and his mother was troubled. She did not have regular employment.

c. He signed up for the Army at 17 years of age. He met his first wife while he was in the Army and she had severe mental health issues. When she was pregnant, he left the Army to take care of her and work to earn enough money. They lost their baby and he returned to the Army. When he absented himself again, he did so to take care of his family. Young Soldiers did not make enough money in the Army in the mid-1970s.

d. After his discharge he went to work in the textile industry in North Carolina. He worked as a head custodian at an elementary school where he could ensure every child got a meal to eat and a clean, safe place to learn. He did not always have that as a child.

e. He and his second wife raised two beautiful daughters. One is a registered nurse and another is a phlebotomist. He and his wife founded a food pantry in North Carolina and for more than 2 decades have been involved in every facet of the pantry's operation. The pantry has donated more than \$1 million in items such as food, eyeglasses, tires, clothes and furniture.

f. He has helped the community in other ways as a trustee for the fire department. The County Board of Commissioners has appointed him to this position. He helps the local Boy Scouts.

4. The applicant provides:

a. Documents of his church showing photographs of patrons and members.

b. City newspaper stories about his food pantry and his work as a volunteer.

c. A County Board of Commissioners letter, appointing him as a trustee for the local volunteer fire department.

d. A letter of thanks from the local elementary school thanking him for the donations of food from his pantry.

e. A letter of support attributing his volunteerism in his community.

f. A U.S. Department of Justice, Federal Bureau of Investigation report showing no criminal history.

5. A review of the applicant's service records show:

a. On 20 July 1973, he enlisted in the Regular Army for 4 years at age 17.

b. He was awarded military occupational specialty 11B (Light Weapons Infantryman) and he was assigned to 1st Battalion, 325th Infantry, 82d Airborne Division, Fort Bragg.

c. On 11 September 1974, he was reported absent without leave (AWOL) from his unit; on 11 October 1974, he was reported as a deserter and dropped from the rolls.

d. On 24 November 1974, he returned to military control and he was assigned to his unit as present for duty (PDY).

e. On 13 January 1975, he was reported AWOL from his unit and on 13 February 1975, he was DFR of his organization.

f. On 19 February 1976, his status changed to present for duty (PDY) after he was apprehended by civil authorities.

g. On 20 February 1976, court-martial charges were preferred against him. His DD Form 458 (Charge Sheet) shows he was charged with one specification of AWOL from 13 January 1975 to 19 February 1976 (402 days).

h. After consulting with legal counsel on 23 February 1976, he voluntarily requested discharge for the good of the service, under the provisions of Chapter 10, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel). In doing so, he acknowledged that the charges preferred against him under the UCMJ, authorized the imposition of a bad conduct discharge or dishonorable discharge. He further acknowledged:

- he had not been subjected to coercion with respect to his request for discharge
- he had been advised of the implications that were attached to it
- by submitting the request, he was acknowledging he was guilty of the charge(s) against him or of (a) lesser included offense(s) therein contained which also authorized imposition of a bad conduct or dishonorable discharge
- he could be discharged under other than honorable conditions, furnished an undesirable certificate, and he could be ineligible for many or all benefits administered by the Department of Veterans Affairs (VA)
- he could be deprived of many or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he could expect to encounter substantial prejudice in civilian life by reason of an under other than honorable conditions discharge
- he was advised he could submit any statements he desired in his own behalf, and elected to do so

i. On the same date, he provided a written statement to his commander in which he requested discharge from the Army because he felt like he was not right for Army life. He enlisted to try to please his family and he found out it was the wrong thing to do. His father was a first sergeant when he and his mother separated and he was young and did not see much of his father. He felt like it would bring him closer to him but it did not. He felt like it would be best for the Army to discharge him.

j. On 23 February 1976, he underwent a medical examination and indicated he was in good health. He further underwent a mental status evaluation. A DA Form 3822-R (Report of Mental Status Evaluation) shows his command requested evaluation as the result of desertion. This report shows the examiner found that the applicant met the physical retention standards prescribed in Army Regulation 40-501 (Standards of Medical Fitness). The examiner further determined that the applicant was mentally responsible, able to distinguish right from wrong, able to adhere to the right, and had the mental capacity to understand and participate in board proceedings.

k. The Commander, U.S. Army Personnel Control Facility (PCF), XVIII Airborne Corps and Fort Bragg; and intermediate commander recommended approval of his request for discharge for the good of the service and issuance of an Undesirable Discharge Certificate, 25 February 1976 and 26 February 1976, respectively. In his

recommendation for approval, the commander, PCF noted two periods of AWOL; 11 September 1974 to 23 November 1974, and 13 January 1975 to 18 February 1976 (476 days).

l. On the same date, he requested and was granted excess leave.

m. On 3 March 1976, the Staff Judge Advocate, XVIII Airborne Corps, reviewed his request for discharge and the records of AWOL and service, and recommended approval of his request.

n. On 9 March 1976, the separation authority, Headquarters, 1st Support Command (Corps), Fort Bragg, approved his separation under the provisions of Chapter 10, Army Regulation 635-200 for the good of the service. He further directed issuance of an Undesirable Discharge Certificate and reduction to the lowest grade.

o. On 5 May 1976, he was discharged. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10 with separation program designator of KFS (conduct triable by court-martial), for the good of the service, and reentry eligibility code 4. His service was characterized as under other than honorable conditions. He completed 1 year, 5 months, and 27 days of active service and had 468 days of lost time. His DD Form 214 also shows he was awarded or authorized the National Defense Service Medal, Parachutist Badge, and Expert Marksmanship Qualification Badge with Rifle Bar (M-16).

5. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

6. 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:**

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. Discharge Upgrade: Grant to General. The applicant was charged with commission of an offense (AWOL terminated by apprehension), punishable under the UCMJ with a punitive discharge. 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. The Board noted that the applicant did accept responsibility for his actions and expressed remorse. He also provides multiple documents in support of a clemency determination, indicating he has been an upstanding citizen, living a law-abiding life, working steadily, supporting his family, raising children, and retiring from his last job. However, the Board also noted that his AWOL was terminated by apprehension, indicating that he had no intent of returning to military control. Thus, the Board determine that based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. Reason for Separation: Deny. The applicant's narrative reason for separation was assigned based on the fact that he was discharged under chapter 10 of AR 635-200. He committed offenses punishable under the UCMJ with a punitive discharge via a court-martial, and when court-martial charges were preferred against him, he voluntarily requested a discharge in lieu of trial by a court-martial. The Board noted that the underlying reason for his separation is his request to be voluntarily discharged instead of being tried by a court-martial. The only valid narrative reason under chapter 10 of AR 635-200 is in lieu of trial by court-martial which is correctly listed on his DD Form 214.

c. Separation Code and RE Code: Deny. Enlisted Soldiers who request a voluntary discharge under chapter 10 of AR 635-200 are assigned Separation Code KFS. This Separation Code has a corresponding RE Code of 4. The Board found his Separation Code and RE Code are neither in error nor 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, 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, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. 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. 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. Chapter 10 provided that a member who had committed an offense or offenses for which the authorized sentence included a punitive discharge could submit a request for discharge for the good of the service for conduct triable by court-martial. The request could be submitted at any time after charges were preferred. Although an honorable or general discharge could be directed, an Undesirable Discharge Certificate would normally be furnished to an individual who was discharged for the good of the service.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), currently in effect, This regulation sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. Paragraph 5–3. Secretarial plenary authority. Separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

b. Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers. When used in the latter circumstance, it is announced by special HQDA directive that may, if appropriate, delegate blanket separation authority to field commanders for the class category of Soldiers concerned.

4. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time (20 May 1974), listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "KFS" corresponded to "Conduct Triable by Court-Martial," and the authority, Army Regulation 635-200, chapter 10.

5. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), currently in effect, lists the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "JFF" corresponds to "Secretarial Authority," and the authority, Army Regulation 635-200, paragraph 5-3.

6. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Chapter 3 prescribes basic eligibility for prior-service applicants for enlistment and includes a list of Armed Forces reentry eligibility (RE) codes.

- RE-1 applies to persons completing an initial term of active service who are considered qualified to reenter the U.S. Army if all other criteria are met
- RE-3 applies persons who are not considered fully qualified for reentry or continuous service at the time of separation, but disqualification is waivable
- RE-4 applies to persons separated from their last period of service with a nonwaivable disqualification

7. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

8. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs

and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to DRBs and 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 on the basis of 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//