

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 June 2024

DOCKET NUMBER: AR20230011353

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) to general, under honorable conditions. He also requests correction of to his DD Form 214 (Certificate of Release or Discharge from Active Duty) as follows:

- Item 26 (Separation Code): "KFS" to something better
- Item 27 (Reentry Code): RE-4 to something better
- Item 28 (Narrative Reason for Separation): In Lieu of Trial by Courts-Martial to something better
- Item 29 (Dates of Time Lost During This Period): 20040308-20040312 to None

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

- DD Form 149 (Application for Correction of Military Record)
- A personal letter to the Board
- DD Form 220 (Active Duty Report) dated 6 November 2000
- Army Achievement Medal (AAM) Certificate, Permanent Order (PO) 07-03, for the period of 22 April 2001 to 5 May 2001
- DA Form 638 (Recommendation for Award), AAM, PO 07-03, dated 8 September 2001
- DA Form 638, AAM, PO 338-12, dated 4 December 2003
- DD Form 214 for the period ending 12 May 2004
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim), dated 8 August 2023
- 5 character references

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. A review of the applicant's record reflects a DD Form 220 dated 6 November 2000, which shows he has prior service for 2 months and 3 days of active-duty service. The applicant's DD Form 214, item 12d (Total Prior Active Service) will be administratively corrected in the "Administrative Notes" section of this document to read "0 years, 2 months, 3 days" without the need for Board action.

3. The applicant states, in effect, he believes that his discharge is unjust, and he was wrongfully accused. He was constantly treated unfairly by the chain of command (COC), even during his service in Iraq and Afghanistan, but due to him being a good Soldier, no adverse action could be taken against him, as he was always respectful and carried out his duties as instructed. He had requested leave and was never told it was disapproved, so he proceeded to his hometown, not realizing that his leave request was denied as it had several times before and he was now considered absent without leave (AWOL). While on what he thought was approved leave, he brought a friend to the post exchange of his hometown; at the end of their visit, they were approached by authorities who stated they were suspects of theft. The accusations against him are false as he was never apprehended or detained by the police but rather it was his friend that committed the crime, and he was only blamed for being the one to sponsor his friend on base. He was not afforded counsel; he was instead humiliated, belittled, and dehumanized by his COC for about 45 days, while he was held handcuffed at his staff duty desk. Just when he assumed his punishment was over, he was informed of punishment under Article 15, Uniform Code of Military Justice (UCMJ) and possible jail time for shoplifting. He was not aware and did not understand that during the time of the confinement by his unit, that he was actually receiving punishment under UCMJ. He was ultimately administratively discharged, given his DD Form 214, and told not to return.

4. The applicant provides the following:

a. Recommendations, Permanent Orders and Certificates which show he was awarded two AAMs.

b. 5 character references, which reflect the following statements:

(1) Mr. S. T. states, in effect, he is one of his best employees and he is his close friend. He is dependable, a team player, committed to safety and easy to get along with. He has potential for future leadership roles.

(2) Mr. K. M. states, in effect, he has a strong work ethic, supports the entire team, and goes out of his way to help his coworkers. He has earned respect within the organization and will gladly offer him opportunities to advance when the time comes.

(3) Ms. C. C. (applicant's mother) states, in effect, he is dependable, compassionate, and generous. During her recovery from a stroke, he was the one she

trusted to care for her. He is a loving husband and father, a hard worker, and a provider. She was present when he was placed in handcuffs by a noncommissioned officer (NCO) of his unit and escorted back to his home station only to be treated as if he had committed war crimes. He was not a deserter and has suffered enough for his actions.

(4) Mr. R. W. (applicant's father-in-law) states, in effect, he truly respects and welcomes him into his family. He works very hard to accomplish his goals; he cares for his family and wants a better life for them. He is mature, well-grounded and possesses a lot of confidence.

(5) Ms. D. S. states, in effect, she has known him since birth, and he lives his life by always doing the right thing, and he is a valuable person of society. After deployment to Iraq and Afghanistan, she believes he was suffering from PTSD. She does believe he did not realize the consequences of a bad discharge and just signed what was presented to him without understanding what he was agreeing to.

5. The applicant's service record reflects the following:

a. DD Form 220, dated 7 August 2001, shows he had prior service in the U.S. Army Reserve from 8 June 2001 to 10 August 2001, a period of 2 months and 3 days.

b. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of The United States) shows he enlisted in the Regular Army on 6 June 2002 for 4 years. He was held military occupational specialty 14J, Early Warning Systems Operator.

c. DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG)) dated 9 January 2004, shows the applicant was flagged for adverse action.

d. DA Forms 4856 (General Counseling Form) shows he was counseled for the following issues on:

- 10 February 2004: missing movement
- 8 March 2004: shoplifting while AWOL
- 8 March 2004: AWOL

e. DA Forms 4187 (Personnel Action Form) reflects the following changes in the applicant's duty status:

- 8 March 2004: present for duty (PDY) to absent without leave (AWOL)
- 12 March 2004: AWOL to military confinement
- 13 March 2004: military confinement to PDY

f. DA Form 3975 (Military Police (MP) Report) dated 13 March 2004, reflects the applicant and his friend were detained after removing jerseys and concealing them without rendering proper payment. They were escorted to the security office when the applicant fled the scene and later returned, he was searched, and was advised of his legal rights which he invoked by requesting a lawyer. He was issued a suspension of exchange privileges letter, a confiscation of identification letter, and released to his unit.

g. DD Form 458 (Charge Sheet) dated 8 April 2004 shows charges were preferred against him as follows:

- Charge I: Violation of the UCMJ, Article 86; one specification of being AWOL from 8 March 2004 to 12 March 2004
- Charge II: Violation of the UCMJ, Article 87; one specification of Missing movement
- Charge III: Violation of the UCMJ, Article 121; one specification of Theft

h. On 8 April 2004, his company and battalion level commanders recommended the disposition of the applicant's charges be referred to a special courts-martial (SPCM).

i. On 12 April 2004, his brigade commander also recommended the disposition of charges be referred to a SPCM.

j. On 13 April 2004, the applicant consulted with counsel and requested a voluntary discharge in lieu of trial by courts-martial under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. He acknowledged that by submitting his request for discharge he was guilty of a charge against him that authorized the imposition of a bad conduct or dishonorable discharge. He indicated in his request he understood he might be discharged under conditions other than honorable and given an under other than honorable discharge, he might be ineligible for many, or all benefits administered by the Department of Veterans Affairs, he might be deprived of many or all Army benefits, and he might be ineligible for many or all benefits as a veteran under both Federal and State laws. He acknowledged he might expect to encounter substantial prejudice in civilian life because of a discharge under other than honorable conditions. He elected not to make a statement in his own behalf.

k. On 23 April 2004, the Staff Judge Advocate (SJA) examined the court-martial charges, their specifications, and the allied papers in the applicant's case, and further recommended that he be tried by a SPCM.

l. On 29 April 2004, the SJA recommended approval of the COC's recommendation of the discharge in lieu of trial by courts-martial, and the separation authority approved the request. The separation authority directed the issuance of an

UOTHC discharge and for the applicant to be reduced to the lowest enlisted grade possible.

m. DD Form 214 Certificate of Release or Discharge from Active Duty) shows he was discharged with an UOTHC discharge, in lieu of trial by courts-martial, pursuant to AR 635-200, Chapter 10. He received a separation code of "KFS" and a reentry code of "4". He completed 1 year, 10 months, and 27 days of net active service this period. This document shows he served in Iraq and Afghanistan from 27 January 2003 to 28 July 2003. He had lost time from 8 March 2004 to 12 March 2004.

6. An email from the Defense Finance and Accounting Service (DFAS), dated 30 April 2024, reflects the applicant had foreign service time from 1 January 2003 to 31 July 2003. Therefore, his DD Form 214, item 12f (Foreign Service) and item 18 (Remarks) will be administratively corrected in the "Administrative Notes" section of this document without the need for Board action to show his foreign service time.

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: Deny. The applicant was charged with commission of an offense (AWOL, Missing Movement, and Theft) 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. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference of a persuasive nature and/or that outweigh his misconduct in support of a clemency determination. 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 he voluntarily requested a discharge in lieu of trial by a court-martial. Absent his violations, there was no reason to prefer court-martial charges against him. The underlying reason for his separation is his request to be discharge 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.

d. Lost Time: Deny. The applicant's service records indicate he was AWOL from 8 to 12 March 2004. Periods of AWOL are non-pay periods. By law and regulation, periods of AWOL, confinement, and desertion are considered lost time, which is not creditable service for pay, retirement, or veterans' benefits. Lost time is required to be listed on the DD Form 214 even if the periods of time lost were later made up. The Board did not find evidence that this lost time is in error or that he made up this lost time. Even if he did so, the requirement to list lost time on the DD Form 214 remains valid.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|---|---|---|----------------------|
| : | : | : | GRANT FULL RELIEF |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| ■ | ■ | ■ | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, 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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows he had prior active service of 0 years, 2 months, 3 days. In addition, he had foreign service and served in Operation Enduring Freedom from 1 January 2003 to 31 July 2003. As a result, his DD Form 214 will be amended to reflect the following:

- item 12d (Total Prior Active Service) to read "0 years, 2 months, 3 days"
- item 12f (Foreign Service) to read "0 years, 6 months, 0 days"

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 635-200, in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, MSO, or period for which called or ordered to active duty.

c. Chapter 10 of that regulation provided, in pertinent part, that a member who had 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 courts-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although

an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate. A soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the Manual for Courts-Martial, 2002 (MCM 2002), includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by courts-martial.

d. Paragraph 5-3 states, in pertinent part, that the separation of enlisted personnel is the prerogative of the Secretary of the Army and will be effected only by his authority. Except as delegated by these regulations or by special Department of the Army directives, the discharge or release of any enlisted member of the Army for the convenience of the Government will be at the Secretary's discretion and with the type of discharge as determined by him. Such authority may be given either in an individual case or by an order applicable to all cases specified in such order.

3. Army Regulation 635-5 (Separation Processing and Documents). 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 REFRAD, retirement, or discharge.

a. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service.

b. The specific instructions for item 28 (Narrative Reason for Separation) stated this is based on regulatory or other authority and can be checked against the cross reference in Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes).

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE code "1" applies to personnel who have completed their obligated term of active service and are considered qualified to reenter the U.S. Army if all other criteria are met.
- RE code "3" applies to personnel who are not considered fully qualified for reentry or continuous service at time of separation, but whose disqualification is waivable. They are ineligible unless a waiver is granted.
- RE code "4" applies to personnel separated from last period of active-duty service with a nonwaivable disqualification.

5. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty.

SPD code "KFS" is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Courts-Martial.

6. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Chapter 2-9 states 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.

7. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service 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//