

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 12 June 2024

DOCKET NUMBER: AR20230011511

APPLICANT REQUESTS:

- Reconsideration of upgrade of his characterization of service from under other than honorable conditions to honorable
- change of his narrative reason secretarial authority and corresponding separation code
- change of his reentry code to RE-1

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

- DD Form 149 (Application for Correction of Military Record)
- Brief in Support of Application for Discharge Upgrade
- Partial military record
- Record of Proceedings (AR20190006022)
- Partial medical record
- Five character letters

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20190006022 on 5 March 2020.
2. The applicant requests reconsideration of his previous request for a discharge upgrade from under other than honorable conditions to honorable. Additionally, he requests a change of his narrative reason from "for the good of the service – in lieu of court-martial" to "secretarial authority," a change to his separation code to correspond with the narrative reason of "secretarial authority," and a change of his reentry code from RE-3 to RE-1.
3. The applicant provides:

a. A brief from counsel that describes that the applicant had been suffering from foot pain for months that left him unable to fulfill his normal duties. He states that his injury went untreated by military providers for months, so he sought treatment by civilian sources. He was absent without leave (AWOL) from 5 October 1989 to 24 October 1989, seeking treatment. On 24 October 1989, he surrendered to Fort Benjamin, after receiving thorough care from a civilian provider.

b. A partial military record that includes his enlistment contract, partial medical records, records applicable to his AWOL status, charge sheet, and separation documents.

c. Record of Proceedings for case AR20190006022, in which the applicant requested an upgrade of his characterization of service to honorable and/or a medical discharge for his disability.

d. A partial medical record that shows a diagnosis of depression and pre and post-operative care instructions for right knee pain and swelling.

e. Five character letters that attest to his great work ethic, his selfless volunteer work to the community and nonprofit organizations, and how honest and hardworking he is.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 24 May 1989.

b. His record contains a DA Form 4187 (Personnel Action), dated 31 October 1989, that shows his duty status changed from "absent without leave" to "present for duty" effective 2300 hours on 16 October 1989.

c. On 30 November 1989, court-martial charges were preferred against the applicant for violation of Article 86 (AWOL) of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with being AWOL with intent to avoid field exercises, from on or about 5 October 1989 to on or about 24 October 1989.

d. He consulted with legal counsel and was advised of the basis for trial by court-martial for an offense punishable by a bad conduct or dishonorable discharge, the possible effects of a request for discharge, and the procedures and rights available to him. After consulting with legal counsel, he 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.

e. In his request for discharge, he acknowledged he understood if the discharge request were approved, he might be discharged under other than honorable conditions and furnished an Undesirable Discharge Certificate. He also acknowledged he understood he might be deprived of many or all Army benefits, he might be ineligible for many or all benefits administered by the Department of Veterans Affairs, he might be deprived of his rights and benefits as a veteran under both Federal and State laws, and he might expect to encounter substantial prejudice in civilian life.

f. He was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service in lieu of trial by court-martial with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 7 months and 10 days of active service, with lost time from 5 October 1989 to 15 October 1989. It also shows in:

- Item 26 (Separation Code): KFS
- Item 27 (Reentry Code): 3
- 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): 891005 – 891015

5. On 5 March 2020, the Board considered ABCMR case AR20190006022, for the applicant's request for an upgrade of his characterization of service and/or medical discharge for his disability. On 3 December 2020, he was informed that his request was denied and it was determined that there was insufficient evidence of in-service mitigation to overcome the misconduct. The Board also determined that there was no error or injustice in the applicant's discharge or character of service, or evidence sufficient as a basis for clemency.

6. By regulation (AR 635-200), 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. At the time, an Undesirable Discharge Certificate would normally be furnished to an individual who was discharged for the good of the service.

7. Also, by regulation (AR 635-5):

a. 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.

b. For block 24 (Character of Service) the correct entry is vital as it affects a soldiers' eligibility for post-service benefits. Characterization or description of service is determined by directives authorizing separation. The entry must be one of the following: honorable, under honorable conditions (general), under other than honorable conditions, bad conduct, dishonorable, or uncharacterized.

c. For block 26 (Separation Code) obtain the correct entry from AR 635-5-1, which provides the corresponding separation program designator code for the regulatory authority and reason for separation.

d. For block 27 (Reentry Code) AR 601-210 determines RA and USAR reentry eligibility and provides regulatory guidance on the RE codes.

e. For block 28 (Narrative Reason for Separation) of the DD Form 214 will show the narrative reason for separation as shown in AR 635-5-1 (Separation Program Designators) based on the regulatory or other authority.

8. 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.

9. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 4 January 1990 discharge characterized as under other than honorable conditions. He states through counsel:

"The Applicant was the victim of a material error of discretion when he was discharged with an 'Under Other Than Honorable Conditions' characterization of service. The Applicant would like to apologize for his decision to go AWOL and miss his assigned duties for 19 days. The Applicant knows that this decision harmed his unit and did not reflect the standards expected of him by the United States Army.

However, the Applicant felt as if he had no other option then to leave and seek civilian medical treatment. The Applicant had been experiencing severe foot pain for over a month and because there was no indication of a fracture, the Army ignored the injury. The Applicant needed treatment so that he could properly do his job and due to the lack of resources provided to him by the Army, he decided to seek help elsewhere so that his injury could be addressed and not aggravated by lack of care. The Applicant has been severely punished for trying to do what was best for his health so that he could continue to serve his country honorably.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. The DD 214 for the period of service under consideration shows he entered the Regular Army on 24 May 1989 and was discharged under other than honorable conditions on 4 January 1990 under the separation authority provided by chapter 10 of AR 635-200, Personnel Separations – Enlisted Personnel (26 May 1989): Discharge for the Good of the Service. The DD 214 shows one period of lost time: 5-15 October 1989.

d. Several pages of contemporaneous medical documentation show the applicant was evaluated and treated for right foot pain. Radiographs were negative for fracture or other abnormality.

e. A Charge Sheet (DD form 458) shows the applicant was charged with absence without leave (AWOL) from 5-24 October 1989.

f. On 8 December 1989, the applicant voluntarily requested discharge in lieu of trial by courts-martial under provisions in chapter 10 of AR 635-200 for the charge of violating Article 86 of the UCMJ: “Absent without authority and with the intent to avoid field exercises.”

g. His request was approved by the Commanding General of the 9th Infantry Division (Motorized) on 21 December 1989 with the directives he receives an under other than honorable conditions characterization of service and be reduce in rank to private (E1).

h. Review of his records in JLV shows the applicant is not registered with the VA.

i. It is the opinion of the ARBA medical advisor that a discharge upgrade remains unwarranted.

j. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of her characterization of service. Upon review of the applicant's petition, available military record and medical review, the Board concurred with the advising official finding insufficient evidence that a discharge upgrade is warranted. The Board found the applicant's record is absent sufficient evidence of in-service mitigating factors to overcome the misconduct of going AWOL during a unit field exercise.

2. The Board agreed the applicant accepted responsibility for his actions and was remorseful with his application, demonstrating he understands his actions were not that of all Soldiers. The Board applauds the applicant for his extensive community service, the Board recognized the applicant's numerous character letters of support that attested to his hard work ethic, dedication to his family, integrity and commitment to being an example for other veterans. However, the Board found the applicant's letters of recommendation and his post service contributions could not outweigh his period of AWOL during a unit exercise. Therefore, the Board found reversal of the previous Board determination is without merit and relief is denied.

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 AR20190006022 on 5 March 2020.

[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 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

2. Army Regulation 635-5 (Separation Documents) states:

a. 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.

b. For block 24 (Character of Service) the correct entry is vital as it affects a soldiers' eligibility for post-service benefits. Characterization or description of service is determined by directives authorizing separation. The entry must be one of the following: honorable, under honorable conditions (general), under other than honorable conditions, bad conduct, dishonorable, or uncharacterized.

c. For block 26 (Separation Code) obtain the correct entry from AR 635-5-1, which provides the corresponding separation program designator code for the regulatory authority and reason for separation.

d. For block 27 (Reentry Code) AR 601–210 determines RA and USAR reentry eligibility and provides regulatory guidance on the RE codes.

e. For block 28 (Narrative Reason for Separation) of the DD Form 214 will show the narrative reason for separation as shown in AR 635-5-1 (Separation Program Designators) based on the regulatory or other authority.

3. Army Regulation (AR) 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a Soldier who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not being coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

4. 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. 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.

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 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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//