

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 June 2024

DOCKET NUMBER: AR20230012219

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge.

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

- DD Form 293 (Application for the Review of Discharge)
- Complete Enlistment Record
- DA Form 4187 (Personnel Action), dated 16 April 1999

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 the paperwork for his student loan deferment was not properly handled by the Military Entrance Processing Station (MEPS). He was unaware it was not being paid until he reached his duty station at Fort Hood, TX. He was called into the first sergeant's office and questioned about his debt. He sought assistance through a Judge Advocate and was told it was a mistake on the Army's part, but nothing would be done and to finish his enlistment. He made a mistake by going absent without leave, he was young and dumb. On day 31 of being absent, he turned himself in for out-processing. He seeks this correction for the betterment of his family.
3. The applicant provides his complete enlistment record which is available for the Board in its entirety. He also provides a DA Form 4187, dated 16 April 1999, reassigning him to a different unit.
4. A review of the applicant's service records show:
  - a. He enlisted in the Regular Army on 10 November 1998.
  - b. His record contains two DA Forms 4187, which show, in pertinent part:

- on 16 December 1999, his duty status changed from present for duty to AWOL
- on 15 January 2000, his duty status changed from AWOL to dropped from rolls

c. On 29 September 2000, the applicant returned to military control at Fort Leavenworth, KS.

d. The complete facts and circumstances surrounding the applicant's discharge are unavailable for the Board to review.

e. On 22 June 2001, the applicant was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, 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 1 year, 9 months, and 22 days of active service. It also shows lost time from 16 December 1999 to 28 September 2000.

5. By regulation, a Soldier who has committed an offense or offenses, the punishment for which under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharge in lieu of trial by court-martial.

6. In reaching its determination, the Board can consider the applicants 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. The complete facts and circumstances of the applicant's discharge processing are not available for review. However, his record contains a DD Form 214 that shows he was discharged on 22 June 2001, under AR 635-200, Chapter 10, in lieu of trial by court-martial with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 1 year, 9 months, and 22 days of active service with lost time from 16 December 1999 to 28 September 2000. (445 days). The ABCMR will decide cases on the evidence of record. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The Board found no error or injustice in his separation processing. Also, the applicant provided no evidence of post-

service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of available evidence, the Board determined that the character of service and reason for separation the applicant received upon separation were not in error or unjust.

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 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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), sets policies, standards, and procedures for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. The honorable characterization of service 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.

b. Paragraph 3-7b (General Discharge) states 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 (Discharge in Lieu of Trial by Court-Martial) states a Soldier who has committed an offense or offenses, the punishment for which under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharge in lieu of trial by court-martial.

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//