

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2024

DOCKET NUMBER: AR20230012569

APPLICANT REQUESTS: an upgrade of his uncharacterized service.

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

- DD Form 149 (Application for Correction of Military Record)
- letter to immediate commander, 17 May 1993
- Orders 208-00211, 27 July 1993
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 10 August 1993

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 when he found out his mother was medically in critical condition, he went absent without leave (AWOL) because he felt his mother needed his support, and he wanted to see her before she got worse. When he was AWOL, he stayed in contact with his platoon sergeant and company first sergeant, and he was told he could turn himself in and request an entry-level separation. He feels that since his service was honorable before he was AWOL and surrendered to military authorities, he is at least entitled to a general discharge. He claims to have been injured and felt like he could not be seen without being considered weak, which caused him frustration. He asks the Board for relief so he can seek healthcare from the Department of Veterans Affairs and notes that he was told that he would get a discharge upgrade after one year of his discharge.

3. The applicant enlisted in the Regular Army on 14 October 1992, for 3 years and 17 weeks. The highest rank/grade he held was private/E-2.

4. Five DA Forms 4187 (Personnel Action) show:

a. Effective 18 March 1993, the applicant's unit reported him absent without leave (AWOL), and on 20 March 1993 reported him present for duty.

b. Effective 5 April 1993, the applicant's unit reported him AWOL, and on 5 May 1993 he was dropped from the rolls. His duty status changed to returned to military control when he surrendered to military authorities on 12 May 1993.

5. On 17 May 1993, court-martial charges were preferred against the applicant. The DD Form 458 (Charge Sheet) shows he was charged with absenting himself from his organization from on or about 5 April 1993 and did remain so absent until on or about 12 May 1993.

6. On the same date, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the uniform code of military justice (UCMJ); the possible effects of a under other than honorable conditions discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

b. He elected to submit statements in his own behalf; however, statements if submitted are not available for review.

7. The applicant's chain of command recommended approval of the applicant's request for discharge and the issuance of an entry level separation.

8. On 7 July 1993, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial and directed the issuance of an entry level separation.

9. The applicant was discharged accordingly on 10 August 1993, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of court-martial, in the grade of E-2. He received a separation code of "KFS" and a reentry code of "RE-3." He was credited with

8 months and 18 days of net active service. He had lost time from 18 March 1993 thru 19 March 1993 and 05 April 1993 thru 11 May 1993. His service was uncharacterized.

10. The applicant provides his Army discharge orders and a letter from him to his immediate commander inquiring about his eligibility for an entry level separation while he was in an AWOL status.

11. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial. When characterization of service under other than honorable conditions is not warranted for a member in entry level status, the separation will be described as an entry level separation.

12. The Board should consider the applicant's argument and evidence, along with the overall 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 applicant was charged with commission of an offense (AWOL) 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 applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Therefore, 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.

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:

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, in effect at the time, set forth the primary authority for separating enlisted personnel.

a. Chapter 10 states in part, a member who has committed an offense or offenses, the punishment for any of which, under the UCMJ and the Manual for Court-Martial, include bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. In addition, the request for discharge may be submitted at any stage in the processing of the charges until the court-martial convening authority's final action on the case. Commanders will also ensure that a member will not be coerced into submitting a request for discharge in lieu of trial by court-martial. The member will be given a reasonable time (not less than 72 hours) to consult with a consulting counsel and to consider the wisdom of submitting such a request for discharge.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. An under other than honorable discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and in lieu of trial by court-martial. When characterization of service under other than honorable conditions is not warranted for a member in entry level status, the separation will be described as an entry level separation.

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/NR) 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//