

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 7 June 2024

DOCKET NUMBER: AR20230012713

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

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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, while he was on leave, his leadership promoted him, listed him as absent without leave (AWOL), and he lost a child at birth.

a. The applicant called Sergeant (SGT) J__ at the personnel administration center and SGT J__ advised the applicant to apply for "BLUE BARK Orders" (orders issued to U.S. military personnel and Department of Defense civilian for travel in connection with the death of an immediate family member). After this, the applicant received a call telling him the unit had placed him in an AWOL status and that he needed to report to Fort Knox, KY.

b. On his arrival at Fort Knox, they informed the applicant SGT J__ should have instructed him to apply for a compassionate reassignment. The applicant called SGT J__ again, but SGT J__ said he could not remember what he had previously told the applicant. They then pointed out to the applicant that he could fight this, but he would face a court-martial and would be waiting for months without receiving any pay; the applicant asked how his family would survive while he fought against this injustice.

c. As the Army was processing his separation, a chaplain counseled the applicant and acknowledged the applicant was facing an injustice. All this was happening during a period when the Army was downsizing, and, at Fort Knox, they were separating

individuals who had been AWOL for years. The applicant declares that he had been a model Soldier and received honors while at advanced individual training (AIT); in addition, at AIT he volunteered for Operation Desert Shield/Desert Storm, but his drill sergeant told the applicant to "get back in line because I had a family."

d. The applicant provides further context in a self-authored statement; in addition to what he described above, the applicant writes:

- he took leave when his wife went into labor; at the time, the applicant, his wife, and his two sons lived in a rural community, and his wife was experiencing a lot of difficulties after losing their child
- he felt pressure to separate from the Army; they constantly reminded him of his responsibilities to his family
- one of the men in the applicant's barracks said he had been waiting 8 months to resolve his AWOL case, and that, although the military was moving slowly, he was going to fight to the end; he added that, unlike the applicant, he did not have a family depending on him

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

a. On 18 September 1990, the applicant enlisted into the Regular Army for 4 years.

b. On 30 June 1991, the applicant's unit reported him as AWOL and, on 30 July 1991, dropped him from unit rolls. On 12 August 1991, the applicant surrendered himself to military authority at Fort Knox; orders subsequently assigned him to the U.S. Army Personnel Control Facility (PCF) at Fort Knox.

c. On 21 August 1991, the PCF preferred court-martial charges against the applicant for having been AWOL from 30 June to 12 August 1991 (43 days). On 21 August 1991, after consulting with counsel, the applicant voluntarily requested discharge in-lieu of trial by court-martial under Chapter 10 (Discharge for the Good of the Service), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). In his request, he affirmed no one had subjected him to coercion, and counsel had advised him of the implications of his request. The applicant further acknowledged he was guilty of the charges against him; he elected to submit a statement in his own behalf, and he provided the following:

(1) The applicant requested the separation authority grant him a general discharge under honorable conditions and he explained why he had been AWOL. He stated he had gone home on leave because his wife was having a difficult pregnancy. On 8 June 1991, the day his leave expired, his wife's condition worsened, so he contacted the American Red Cross; the Red Cross verified the applicant's situation and reached out to the applicant's unit in Germany.

(2) On 21 June 1991, their baby was stillborn; that same day, the Red Cross called the applicant at the hospital to say the unit had approved emergency leave until 24 June 1991. The applicant called back to the Red Cross to explain that his baby's burial was scheduled for 25 June 1991, and, after his wife's release from the hospital, she had started to bleed excessively. In addition, they did not have any other family in the area, and the applicant and his wife had two sons that required care.

(3) The Red Cross verified the applicant's circumstances with his wife's doctor, and the doctor noted that, on 6 August 1991, the applicant's wife was due to have surgery. When Red Cross called the applicant's unit commander, the commander responded by instructing the applicant to contact the nearest military installation and request "BLUE BARK" orders.

(4) The Red Cross gave the applicant a telephone number for a nearby personnel and the applicant called and spoke to SGT J__. SGT J__ told the applicant to "stand fast [and] do [not] move...he [would] get in touch with me." Two weeks later, SGT J__ called to say that the unit now considered the applicant as AWOL. On 12 August 1991, despite the fact that his wife's surgery had been moved from 6 to 13 August, the applicant left for Fort Knox and turned himself in.

d. On 21 August 1991, the applicant departed Fort Knox on indefinite excess leave.

e. On 22 October 1991, Major (MAJ) N__ J. S__ provided the following statement for the separation authority:

(1) The applicant stated his commander instructed him to turn himself in to the nearest military installation and request "BLUE BARK" orders, and the applicant notes that he called someone named SGT J__ at a nearby Army Recruiting Battalion and that SGT J__ allegedly told him to "stand fast and not move...."

(2) MAJ S__ stated, "We contacted SGT J__ and asked if he remembered the conversation with [applicant]. SGT J__ stated he remembered the conversation with [applicant] very well. He (SGT J__) states [applicant] contacted him and told him his unit (said) to seek 'BLUE BARK' orders for a compassionate reassignment. SGT J__ explained to [applicant] that he (the applicant) was not eligible for 'BLUE BARK' orders; 'BLUE BARK' orders were for the death of a family member overseas. [Applicant's] family was already in CONUS prior to his child's death. SGT J__ told [applicant] to obtain a leave extension from his unit and then attempt to get a compassionate reassignment in CONUS. [Applicant] contacted the Red Cross. [Applicant] was told they (the Red Cross) could not help because he was already AWOL. Also, SGT J__ was contacted by the Red Cross and was told that the Red Cross could not help [applicant] because he was AWOL. SGT J__ contacted [applicant] and told him to report to the

nearest military installation ASAP (as soon as possible). [Applicant] did not surrender to military control until 12 August 1991."

(3) MAJ S__ concluded, "[Applicant] failed to obey his orders and report to the nearest military installation. He was aware that his leave ended 24 Jun(e) (19)91 as he stated in his statement...he was AWOL as of 25 Jun(e) (19)91."

f. On 25 October 1991, the separation authority approved the applicant's separation request and ordered his under other than honorable conditions discharge. In addition, the separation authority directed the applicant reduction from private first class to private (PVT)/E-1. On 12 November 1991, orders discharged the applicant accordingly.

g. The applicant was discharged with an under other than honorable characterization of service on 12 November 1991. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year and 12 days of active service. It also shows in:

- Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – National Defense Service Medal, Army Service Ribbon, and a marksmanship qualification badge
- Item 25 (Separation Authority) – AR 635-200, Chapter 10
- Item 26 (Separation Code (SPD)) – "KFS"
- Item 27 (Reentry (RE) Code) – RE-3
- Item 28 (Narrative Reason for Separation) – "FOR THE GOOD OF THE SERVICE – IN LIEU OF COURT-MARTIAL"

4. 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 Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with being absent without leave from 30 June 1991 to 12 August 1991, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation

proceedings and designated characterization of service assigned during separation. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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, USC, 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. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable character of service represented a separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when a Soldier's subsequent honest and faithful service, over a greater period, outweighed any disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 5-3 (Secretarial Authority) stated the separation of enlisted personnel was the prerogative of the Secretary of the Army and was to be executed per the Secretary's authority, on a case-by-case basis. Soldiers being separated for the convenience of the Government were to be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service, if in entry-level status. No Soldier was to be awarded a character of service under honorable conditions unless the Soldier was notified of the specific factors in his/her service record that warranted such a characterization.

d. Chapter 10 applied to Soldiers who had committed an offense or offenses for which the punishment under the UCMJ included a punitive (i.e. bad conduct or dishonorable) discharge. Soldiers could voluntarily request discharge once charges had been preferred; commanders were responsible for ensuring such requests were personal decisions, made without coercion, and following being granted access to counsel. The Soldier was to be given a reasonable amount of time to consult with counsel prior to making his/her decision. The Soldier was required to make his/her request in writing, which certified he/she had been counseled, understood his/her rights,

could receive an under other than honorable conditions character of service, and recognized the adverse nature of such a character of service.

3. The Manual for Courts-Martial in effect at the time showed violations of Article 86 (AWOL for more than 30 days) included punitive discharges among its maximum punishments; Soldiers who surrendered to military authority could receive a bad conduct discharge, while those whose absence was terminated by an apprehension faced a possible dishonorable discharge.

4. AR 600-200 (Enlisted Personnel Management System), in effect at the time, stated in paragraph 6-11 (Approved for Discharge from Service Under Other than Honorable Conditions) that when a separation authority determined a Soldier was to be discharged from the Service under other than honorable conditions, the separation authority had to reduce that Soldier to the lowest enlisted grade. Board action was not required for this reduction.

5. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for the completion of the DD Form 214. The regulation linked the narrative reason for separation to the regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 for this entry and the separation code (SPD).

6. AR 635-5-1 (SPD), in effect at the time, showed the narrative reason for separation assigned to Soldiers separated per chapter 10, AR 635-200 was, "For the Good of the Service – In Lieu of Court-Martial." and the SPD was "KFS."

7. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers and Reserve Component Soldiers; the table shows the SPD code and its corresponding RE code. The SPD code of "KFS" has a corresponding RE code of "3."

8. AR 15-185, currently in effect, states:

a. The ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, the ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

b. The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

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