

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 July 2024

DOCKET NUMBER: AR20230013078

APPLICANT REQUESTS:

- in effect, an upgrade of his under other than honorable conditions discharge
- a personal appearance before the Board

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) effective 9 July 1987

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 in effect, he is requesting an upgrade of his under other than honorable conditions discharge. Prior to the applicant's military service, his biological mother was involved in a personal relationship with a man that was physically abusive. The applicant began drinking at the age of 16. After his mother was hospitalized during his junior year of high school, she directed him to enlist in the U.S. Army without a personal choice. He continued to drink excessively during his military training and received an Article 15 while in advanced individual training at Fort McClellan due to intoxication. After graduating from airborne school at Fort Bragg he received permanent orders and went absent without leave (AWOL) for several months prior to being returned. He was subsequently voluntarily discharged. The applicant contends that he had an undiagnosed substance use disorder (alcohol dependence) at the time, for which he has since sought treatment.

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

a. He enlisted in the Regular Army on 9 September 1986.

b. Orders 86-2 dated 7 May 1987, assigned the applicant to the Special Processing Company, U.S. Army Personnel Control Facility, Fort Knox, KY after being apprehended by civilian authorities in Howard, IN on 29 April 1987.

c. On 4 May 1987, a DD Form 458 (Charge Sheet) indicated that court-martial charges were preferred on the applicant for one specification of absenting himself without authority from his organization on or about 7 March 1987 until on or about 29 April 1987.

d. On 5 May 1987, after consulting with legal counsel he requested a discharge in lieu of trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- maximum punishment
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may discharged under other than honorable conditions
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration
- he may be deprived of his rights and benefits as a Veteran under both Federal and State Law
- he may expect to encounter substantial prejudice in civilian life

e. On 9 June 1987, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial under the provisions of AR 635-200, Chapter 10. He would be separated with an under other than honorable conditions discharge and reduced to the lowest enlisted grade, private, E-1.

f. On 9 July 1987, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 8 months and 9 days of active service with 53 days of lost time from 7 March 1987 to 28 April 1987. He was assigned separation code KFS and the narrative reason for separation is listed as "For the Good of the Service – In Lieu of Court-Martial," with reentry codes 3B, 3C, and 3. It also shows he was authorized the:

- Army Service Ribbon
- Rifle M-16 Marksmanship Qualification Badge
- Hand Grenade Expert Qualification Badge
- Pistol 45 Caliber Sharpshooter Qualification Badge

- Parachutist Badge

4. On 23 May 2024, the U.S. Army Criminal Investigation Division (CID) conducted a search of the Army criminal file indexes and found there were no MST records revealed utilizing the provided information on the applicant.

5. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations

6. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

7. By regulation (AR 635-200), a member who has committed an offense or offenses, the punishment for which, under the UCMJ, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service.

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 9 July 1987 discharge characterized as under other than honorable conditions. He states he went absent without leave (AWOL) due to his pre-existing undiagnosed "alcohol dependence."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 9 September 1986 and was discharged under other than honorable conditions on 9 July 1987 under the separation authority provided by chapter 10 of AR 635-200, Personnel Separations – Enlisted Personnel (15 April 1985): Discharge for the Good of the Service.

d. A Charge Sheet (DA Form 458) dated 4 May 1987 shows the applicant was charged with absence without leave from 7 March thru 29 April 1987.

e. On 5 May 1987, the applicant voluntarily requested discharge in lieu of trial by court-martial under chapter 10 of AR 635-200. The request was approved by the brigade commander on 6 June 1987 with the directive he receive an under other than honorable characterization of service.

f. Review of his records in JLV shows he has received humanitarian emergency care as a non-service-connected Veteran. He has no mitigating mental health diagnoses.

g. It is the opinion of the Agency medical advisor that an upgrade of his discharge is unwarranted.

h. 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 his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding that an upgrade of his discharge is unwarranted.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of AWOL. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of his under other than honorable conditions (UOTHC) discharge for the 8 months and 9 days of active service with 53 days of lost time. Therefore, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 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.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states that a member who has committed an offense or offenses, the punishment for which, under the UCMJ and the MCM; 1984, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the Service. An Under Other Than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the Service.

4. 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.

5. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//