

IN THE CASE OF: ██████████

BOARD DATE: 21 June 2024

DOCKET NUMBER: AR20230013102

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to honorable
- amendment to his narrative reason for separation to Secretarial Authority

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Counsel Brief
- DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the United States)
- DA Form 2-1 (Personnel Qualification Record – Part II)
- DA Form 1307 (Individual Jump Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 21 September 1982
- Two Character Reference Letters

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 his reasons for enlistment and the reasons for his period of absence, in part, was due to a need to protect his mother from his abusive stepfather. He remained at home doing odd jobs before being returned to military control. Since his separation he has been in the Life Safety & Security industry at Walmart, Boeing, McClellan Air Force Base, the County of Placer CA, and Desert Mountain Fire Protection Company.
3. The applicant, through counsel, states he was a member of his high school Reserve Officer Training Corps and came from an abusive family situation prior to enlistment. He

cites the applicant's training and reasons for his absence without leave (AWOL) as due to his mother's poor health and abuse by his stepfather. Counsel contends the separation authority has committed a material error of discretion for discharging the applicant under "Misconduct-AWOL" narrative reason for separation, noting the applicant returned home on his first leave to discover his ill mother suffering abuse at his stepfather's hand. Upon the realization that he would need to step in to ensure his mother's safety and well-being, he informed his duty sergeant with this news. Counsel also submitted that the applicant has suffered a material injustice from his discharge status and character of service due to the difficult circumstances in which he found his mother.

4. A review of the applicant's service record shows he enlisted in the Regular Army on 18 May 1979.

5. The applicant was reported as AWOL on 4 March 1980, dropped from the rolls in desertion on 3 April 1980, apprehended by civilian authorities and returned to military control on 26 May 1982.

6. The applicant's service record is void of the facts and circumstances surrounding his discharge.

7. On 21 September 1982 he was discharged from active duty. His DD Form 214 shows:

- item 24 (Character of Service): under other than honorable conditions
- item 25 (Separation Authority): paragraph 17-23, AR 635-200
- item 26 (Separation Code): JKD
- item 27 (Reenlistment Code): 3 & 3B & 3C
- item 28 (Narrative Reason for Separation): Misconduct-AWOL
- item 29 (Dates of Time Lost During This Period): 4 March 1980 – 25 May 1982

8. The applicant provides two letters of support that describe him as the most respected, kind, helpful, dedicated, and knowledgeable friend and co-worker; great family man who is always willing to go the extra mile.

9. By regulation, absentees or deserters who have returned to military control may be discharged without trial when it is determined by an administrative review of all facts that there is a preponderance of evidence to support determination of desertion or absence without leave. This provision should not be confused with the rule of evidence which requires that the guilty of the accused be established beyond a reasonable doubt to justify a criminal conviction of desertion or absence without leave.

10. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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 absent without leave from 4 March 1980 to 25 May 1982, punishable under the Uniform Code of Military Justice with a punitive discharge. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant's letters of support and documents in support of his post-service achievements and determined partial relief was warranted for an upgrade of his characterization of service to under honorable conditions (General). However, the narrative reason for separation assigned during separation was appropriate.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

■ ■ ■ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 21 September 1982, to show his characterization of service as under honorable conditions (General).

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains amending his narrative reason for separation.

7/10/2024

X [Redacted Signature]

CHAIRPERSON

[Redacted Name]

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 sets forth the basic authority for the separation of enlisted personnel. The version in effect at that time provided that:

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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 Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

c. Chapter 14 states absentees or deserters who have returned to military control may be discharged without trial when it is determined by an administrative review of all facts that there is a preponderance of evidence to support determination of desertion or absence without leave. This provision should not be confused with the rule of evidence which requires that the guilty of the accused be established beyond a reasonable doubt to justify a criminal conviction of desertion or absence without leave.

d. Paragraph 5-3 (Secretarial plenary authority) provides that a separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

3. The Under Secretary of Defense for Personnel and Readiness issued guidance to DRBs and BCM/NR on 25 July 2018, 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 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 grounds.

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, 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//