

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 August 2024

DOCKET NUMBER: AR20230013586

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) (2)
- Affidavit in support of application
- Legal brief in support of application
- Character reference letters (3)

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. Counsel states, in pertinent part:

a. The applicant was raised in Texas with his brother. His biological mother was a heroin addict, and his father was absent. His mother passed him and his brother to different family members to take care of them. At nine years old, his mother put the applicant and his brother up for adoption. Throughout his childhood, the applicant grew up in a toxic, sheltered home environment. His adoptive parents prohibited him from socializing with friends and engaging in extracurricular activities. His adoptive family refused him any contact with his biological family. He felt trapped within this adoptive family.

b. In an attempt to leave this hostile environment, the applicant enlisted in the Army National Guard (ARNG). He was discharged from the ARNG for enlistment in the in the Regular Army. He got married and received news his spouse was pregnant. He felt an extreme responsibility to be a present, active parent to his child due to the lack of loving parental figures in his childhood. Thus, he made the impulsive decision to go absent

without leave (AWOL) for three months. Upon his return, the Army advised him that he should focus on his Army family, not his wife and child. This response reminded him of his childhood with his controlling adoptive family. At the time, he did not want to risk becoming like his biological father and adoptive father.

c. Following his discharge, the applicant obtained employment at a dealership and an auto detail company. He has worked extensively to ensure financial and emotional support for his family. He is an upstanding, active member of his community. He volunteers with the Salvation Army and an organization that is associated with the Veterans of Foreign Wars of the U.S.

d. The applicant expresses extreme remorse and regret over his irrational decision to abruptly leave the service. He is currently a devoted father and valuable community member, living an exemplary post service life. The applicant's lack of healthy parental figures and stability during childhood substantially impacted his decision to unexpectedly leave the service.

3. The applicant states he is very remorseful for his actions. Due to his difficult childhood, he felt he had no other choice but to go AWOL upon hearing he was going to be a father. He understands his background does not excuse his decision; however, it gives context to why he left. Since his discharge, he has been an outstanding member of society and has no criminal convictions.

4. The applicant enlisted in ARNG and entered initial active duty for training on 23 January 1994. He was issued a DD Form 214 for this period of service. [see Administrative Note].

5. Having previous service in the ARNG, the applicant enlisted in the Regular Army, on 9 July 1998. The highest grade he attained was E-4.

6. On 2 October 1998, the applicant was reported AWOL and remained absent until he surrendered to military authorities on 27 January 1999.

7. Court-martial charges were preferred against the applicant on 29 January 1999 for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL.

8. On 29 January 1999, 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 UCMJ; the possible effects of a bad conduct discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations –

Enlisted Personnel), Chapter 10, request for discharge 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 declined to submit a statement in his own behalf.

9. The applicant's commander recommended approval of the applicant's request for discharge on 3 April 2000. The commander noted that based on the applicant's previous record, punishment could be expected to have a minimal rehabilitative effect. He believed discharge would be in the best interest of all concerned.

10. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge on 29 May 2000, and directed a UOTHC characterization of service and his reduction in grade to E-1.

11. The applicant was discharged on 13 September 2000. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 1 year, 10 months, and 8 days of net active service this period, with 117 days of lost time.

12. Additionally his DD Form 214 shows he was awarded or authorized the Army Reserve Components Achievement Medal, National Defense Service Medal, Army Service Ribbon, Hand Grenade Expert Qualification Badge, and 9mm Pistol Sharpshooter Qualification Badge.

13. The applicant provides three character reference letters that collectively attest to his family values, compassion, reliability, trustworthiness, reputation, and selfless service he provides others. These letters are provided in their entirety for the Board's review within the supporting documents.

14. 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.

15. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

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 and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of being AWOL for 117 days. The Board recognized the applicant's post service accomplishments since his discharge and his numerous character letters attesting to his character, integrity and his strong commitment to his family and community.

2. The Board noted the applicant accepts responsibility for his actions and was remorseful with his application, demonstrating he understands his actions were not that of all Soldiers. Under liberal consideration, the Board, understands the applicant's rational for going AWOL however, the Board found the applicant's 117 days of AWOL could not be mitigated despite the accolades and character letters of support attesting to his great achievements since his discharge. Based on the evidence the Board denied relief.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.

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.

ADMINISTRATIVE NOTE(S):

The applicant completed a period of initial active duty for training (IADT). He was awarded a military occupational specialty at the completion of training and was transferred back to the ARNG. Army Regulation 635-200 provides that when a Reserve Component Soldier successfully completes IADT, the characterization of service is Honorable unless directed otherwise by the separation authority. Please reissue him a DD Form 214 for the period ending 7 May 1994, showing his character of service as Honorable.

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 the 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.

c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

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.

//NOTHING FOLLOWS//