

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 September 2024

DOCKET NUMBER: AR20230013895

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

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)
- DA Form 87 (Certificate of Training) 23 May 1980 – 3 July 1980
- Hardship/Dependency Discharge documents dated 29 January 1981
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 10 June 1981

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, "see attached copies." He provides:

a. A DA Form 87 shows the applicant completed the Phase 1, One Station Unit Training (OSUT) at Fort McClellan, AL.

b. Documents assembled for a Hardship/Dependency discharge packet by the applicant dated 29 January 1981. The packet includes required notarized letters from the applicant, two disinterested parties, a priest, a list of monthly expenses to run a household and an affirmation of an employment opportunity with a construction company once he is back home. The letters submitted with the packet detailed the applicant's family situation and why he was needed at home and described the stressful situation of his mother's home life and her mental health and living conditions.

c. DD Form 214 for the service periods ending 10 June 1981, to be referenced in the service record.

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

a. He enlisted in the Regular Army on 7 May 1980. His DA Form 2-1, Section II (Classification and Assignment Data) shows the applicant's primary military occupational specialty (MOS) was 95B – Military Police.

b. DA Form 4187 (Personnel Action) dated 7 May 1981, annotated that the applicant's duty status changed from dropped from rolls (DFR) to present for duty (PDY) on 27 April 1981. He had surrendered at Fort Devens, MA to Military Police.

c. A Personnel Control Facility (PCF) Information Sheet dated the 29 April 1981, shows the applicant surrendered and was returned to military control at Fort Devens, MA; he stated he did not want to be in the Army.

e. On the PCF Interview sheet dated 30 April 1981, he answered, "Why did you go AWOL?" with the following statement: he was AWOL from Fischbach, Germany, 165th Military Police (MP) Company. He could not handle the Army and thought he would like it. He just could not handle the stress, his family needed him home, his little brother was taken away by the courts and he needed to be home with his mom. He also stated that before he went AWOL, he tried to get a hardship discharge and talked to the priest and his commanding officer.

f. On 30 April 1981, court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) shows he was charged with one specification of being absent without authority from 26 February 1981 to 27 April 1981.

g. A Report of Mental Status Evaluation, 30 April 1981, confirmed the applicant was referred for a mental evaluation because he was being considered for discharge for misconduct. The evaluation indicated:

- normal behavior and fully alert; fully oriented with unremarkable mood or effect; clear thinking process and normal thought content; good memory
- he had the mental capacity to understand and participate in the proceedings and was mentally responsible

h. On 1 May 1981, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service

- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- 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
- he elected not submit statements on his behalf

i. On 11 May 1981, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge in lieu of trial by courts-martial. He would be issued an Under Other Than Honorable Conditions Discharge Certificate (DD Form 794A) and reduced to the lowest enlisted pay grade.

j. On 10 June 1981, he was discharged from active duty. His DD Form 214 shows he was discharged in accordance with chapter 10 of AT 635-200 with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 11 months and 4 days of active service with 60 days of lost time. He was assigned separation code JFS and the narrative reason for separation listed as "Admin Discharge Conduct Triable by Court Martial", with reentry code 3/3B.

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

5. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

6. 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.

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 evidence shows 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. He completed 11 months and 4 days of active service with 60 days of lost time. The Board found no error or injustice in his available separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of available 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

:	:	:	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 635-5 (Separation Documents), in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.
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 an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. 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.

//NOTHING FOLLOWS//