

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 August 2024

DOCKET NUMBER: AR20230014289

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) characterization of service
- a personal appearance before the Board

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), for the period ending 8 May 1996

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 he is the complete Soldier. His discharge did not accurately reflect his service, as evidenced by his decorations, medals, badges and completion of Quartermaster school.
3. The applicant enlisted in the Regular Army on 19 March 1993.
4. Permanent Orders Number 345-00035, issued by Headquarters, 1st Infantry Division (Mechanized), Fort Riley, KS on 11 December 1995, show the applicant was awarded the Army Good Conduct Medal for his exemplary behavior, efficiency, and fidelity in active service from 19 March 1993 to 18 March 1996.
5. On 24 January 1996, the applicant was issued an administrative reprimand for driving a motor vehicle when his blood alcohol content was in violation of State laws, on 16 December 1995. The applicant was unable to acknowledge receipt of the reprimand

because he was absent without leave (AWOL). The commanding general directed the administrative reprimand be filed in the applicant's official military personnel file.

6. Two DA Forms 4187 (Personnel Action) show the applicant was reported AWOL on 26 January 1996. He was reported present for duty (PDY) on 17 February 1996.

7. Permanent Orders Number 064-00011, issued by Headquarters, Fort Riley, KS on 4 March 1996, revoked Permanent Orders Number 345-00035, dated 11 December 1995, pertaining to the applicant's award of the Army Good Conduct Medal.

8. Three DA Forms 4187 show the following changes in the applicant's duty status:

- PDY to AWOL on 15 March 1996
- AWOL to Dropped from the Rolls (DFR) on 15 March 1996
- DFR to Attached/PDY on 20 March 1996

9. On 21 March 1996, court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with two specifications of being AWOL, from on or about 26 January 1996 until on or about 17 February 1996 and on or about 15 March 1996 until on or about 20 March 1996.

10. The applicant consulted with legal counsel on 28 March 1996.

a. He 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 under other than honorable conditions (UOTHC) discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, in lieu of trial by court-martial, under the provision of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged his understanding that by requesting a 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 acknowledged making this request free of coercion. He further acknowledged understanding that if his discharge request were 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.

c. He was advised he could submit any statements he desired in his behalf. He did not submit a statement.

11. The Staff Judge Advocate and the applicant's battery and battalion commanders recommended approval of the requested discharge and further recommended the applicant be discharged with a UOTHC characterization of service.

12. The separation authority approved the applicant's requested discharge, in lieu of trial by court-martial, on 19 April 1996, and further directed the issuance of an UOTHC discharge.

13. The applicant was discharged on 8 May 1996, under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. His DD Form 214 shows his characterization of service was UOTHC, with separation code KFS and reentry code RE-3. He completed 3 years and 23 days of active service, with lost time from 26 January 1996 to 16 February 1996 and 15 March 1996 to 19 March 1996. He was awarded or authorized the:

- Army Achievement Medal (2nd award)
- Army Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16) and Pistol Bar

14. The Army Discharge Review Board reviewed the applicant's request for an upgrade of his UOTHC character of service on 20 May 2011. After careful consideration, the Board determined the characterization of service was too harsh; the overall length and quality of his service and his post service accomplishments mitigated the discrediting entry in his service record. The Board voted to upgrade the applicant's characterization of service. He was subsequently issued a new DD Form 214 on 8 June 2011, showing his character of service as under honorable conditions (General).

15. Administrative separations under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

16. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination 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 request, supporting documents, evidence in the records, and published Department of Defense 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 26 January 1996 to 17 February 1996 and from 15 March 1996 to 20 March 1996, 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. The Board noted the applicant's previous upgrade from under other than honorable conditions to under honorable conditions (General) and found no additional relief to the characterization of service was warranted.

2. 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, 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides the ABCMR may, in its discretion, hold a hearing. 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. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. 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.

c. 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.

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/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//