

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 July 2024

DOCKET NUMBER: AR20230014615

APPLICANT REQUESTS:

- in effect, correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 14 April 1986, to change his under other than honorable conditions (UOTHC) to something better.
- a personal appearance before the Board (in person or via video/telephone).

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

DD Form 149 (Application for Correction of Military Record)

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 he is requesting his discharge to be changed to something better, even though he accepted an UOTHC discharge. He was a young and recently married Soldier with infant children, and all he wanted to do was take care of his family as he believed this was the honorable thing to do. While stationed abroad he was in the process of relocating his wife twin sons, but his wife after being ill for a while, was now hospitalized due to a serious kidney infection. She had been in the hospital for several weeks and was in no position to care for herself or for their babies. By the time she was well enough to travel they attempted to return to his duty station, in Germany, but he was notified he would be taken into custody. He informed his unit, and even requested an extension on his leave during the time that his spouse was hospitalized. His chain of command (COC) reassured him not to worry, and to take care of his family. He was ready to complete his service obligation and did not fully understand the consequences of the decision to be discharged, and how it would affect his future. He is asking for the change in his characterization so he can become eligible to purchase a home for his family.

3. The applicant's service record reflects the following:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of The United States) shows he enlisted in the Regular Army on 14 January 1985 for 3 years.

b. In a memorandum subject: Delegation of Authority, dated 8 August 1985, shows that the commanding general of Fort Dix, NJ, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 1, paragraph 1-21, delegated his authority to approve separations for the good of the service submitted under Chapter 10 of cited regulation. This authority was limited to cases which the member:

- Had been absent without leave (AWOL) for more than 30 days, and
- Had been dropped from rolls (DFR) of his/her unit as absent in desertion, and
- Had been returned to military control, and
- Was currently at the Personnel Control Facility (PCF), and
- Was charge with AWOL for more than 30 days

c. DA Form 4187 (Personnel Action Form), reflects the applicant's duty status changed from on 25 September 1985 from leave to AWOL.

d. DA Form 4187, reflects the applicant's duty status changed on 24 October 1985 from AWOL to DFR.

e. DD Form 458 (Charge Sheet), dated 28 October 1985, shows charges were preferred against him for a violation of the UCMJ, Article 86, specification for being AWOL on 25 September 1985 and remained so absent until on or about 17 January 1986.

f. DA Form 4187, reflects the applicant's duty status changed on 17 January 1986 from DFR to present for duty (PDY).

g. DA Form 3881, dated 18 January 1986, for AWOL, shows he signed a second waiver in which he acknowledged and understood his rights. He was willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with him.

h. FDCF Form 691 (Personnel Control Military Information Sheet), dated 18 January 1986, shows he surrendered to military control at Fort Devens, MA. The applicant declined a physical at that time and expressed he did not want to stay in the service.

i. FDCF Form 691A (Personnel Control Military Interview Sheet), dated 18 January 1986, also shows that the applicant went AWOL due to family problems. He further explains that he tried contacting his battery and provided his phone number. Additionally, he sent letters to his section chief and his first sergeant (1SG), he even contacted the Red Cross. He did not receive any response from his unit, he even visited a Military Entrance Processing Station (MEPS) in Massachusetts so they can contact his unit. At that point he was bounced around without help between Fort Devens and MEPS. Eventually he was referred to the Fort Devens AWOL apprehension department and surrendered on 17 January 1986. He began visiting MEPS, around 9 October of 1985, and made multiple visits after that. He first visited Fort Devens on 21 September 1986, where he tried to attain information concerning a passport for his child.

j. FDCF Form 671 (AWOL-Deserter Verification Sheet), dated 21 January 1986, shows the applicant's information concerning his personal information, his service, unit of assignment, and AWOL dates of 25 September 1985 to 17 January 1986. The form is available for the Boards review.

k. On 31 January 1986, the applicant submitted a request for discharge for the good of the service, under the provisions of AR 635-200, Chapter 10. This document shows he consulted with counsel and acknowledged that by submitting his request for discharge he was guilty of a charge against him that authorized the imposition of a bad conduct or dishonorable discharge. He indicated in his request he understood he might be discharged under conditions other than honorable and given a UOTHC discharge, he might be ineligible for many, or all benefits administered by the Department of Veterans Affairs, he might be deprived of many or all Army benefits, and he might be ineligible for many or all benefits as a veteran under both Federal and State laws. He acknowledged he might expect to encounter substantial prejudice in civilian life because of a UOTHC discharge. He elected not to submit a statement in his own behalf.

l. On 18 February 1986, his commanding officer recommended the applicant be discharged for the good of the service (Chapter 10), and that he is issued a UOTHC discharge certificate.

m. On 21 March 1986, the separation authority approved the applicant's voluntary request for discharge. He directed the issuance of an UOTHC discharge, and that the applicant is reduced to the lowest grade.

n. DD Form 214 for the period ending 14 April 1986, shows he was discharged with an UOTHC discharge, pursuant to AR 635-200, Chapter 10, for the Good of the Service – in Lieu of Court-Martial. He received a separation code of "KFS" and a reentry code of "3", "3B" and "3C". He completed 0 years, 11 months, and 9 days of net active service this period. Lost time during this period was from 25 September 1985 to 16 January 1986. His grade at the time of discharge was private E-1.

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 AWOL for over four (4) months.
2. The Board noted the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board noted the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. As such, 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

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 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.
  - 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 separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at

expiration of their period of enlistment, MSO, or period for which called or ordered to active duty.

c. Chapter 1-21 Action by commanders having separation authority, implements laws and policies governing voluntary retirement of Soldiers for length of service and criteria governing uncharacterized separations and the issuance of under other than honorable conditions discharges within the Department of the Army (DA). Approval of separation under these provisions is contingent upon this counseling, and a statement of under-standing must be included in the approval packet. Commanders having separation authority directing separation or REFRAD of a Soldier will comply with AR 635-8.

d. Chapter 10 of that regulation provided, in pertinent part, 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, an under other than honorable conditions discharge was normally considered appropriate.

3. Army Regulation 635-8 (Separation Processing and Documents). 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 REFRAD, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service.

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard.

a. Table 3-1 provides a list of RE codes:

- RE code "1" applies to personnel who have completed their obligated term of active service and are considered qualified to reenter the U.S. Army if all other criteria are met
- RE code "2" Applies to persons not eligible for immediate reenlistment
- RE code "3" applies to personnel who are not considered fully qualified for reentry or continuous service at time of separation, but whose disqualification is waivable. They are ineligible unless a waiver is granted
- RE code "4" applies to personnel separated from last period of active-duty service with a nonwaivable disqualification

b. Table 3-6 provides additional information:

- RE code “3B” applies to personnel who have lost time during their last period of service. They are ineligible for enlistment unless a waiver is granted
- RE code “3C” applies to personnel who have completed over 4 months of service who do not meet the basic eligibility pay grade requirements of AR 601-280. They are ineligible for enlistment unless a waiver is granted

5. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "KFS" is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. RE code of “4” is the appropriate corresponding RE code for SPD code "KFS".

6. 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.

7. 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 members will review all applications that are properly before them to determine the existence of an error. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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.

//NOTHING FOLLOWS//