

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 August 2024

DOCKET NUMBER: AR20240000729

APPLICANT REQUESTS: reconsideration of his previous request for:

- an upgrade of his under other than honorable conditions discharge to honorable
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Two Case Management Division (CMD) Letters
- Letter to CMD, 15 June 2020
- Two Standard Form (SF) 180 (Request Pertaining to Military Records)
- National Personnel Records Center (NPRC) Letter, 21 April 2021
- Service Record (18 pages)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20190015504 on 28 August 2020.

2. The applicant states he was not referred to court-martial nor did he have any charges of misconduct to initiate a Chapter 10, as stated on his DD Form 214 (Certificate of Release or Discharge from Active Duty). He does not have a request for discharge in lieu of court-martial and has yet to receive a copy of his official military personnel file (OMPF). The request for discharge in lieu of trial by court-martial should be available in his OMPF and he does not have it.

3. The applicant provides:

a. Two letters from CMD providing him with the status of his case.

- 18 December 2019 – acknowledged receipt of application
- 26 May 2020 – request for additional information with a 30 day hold

b. Two SF 180 requesting a copy of his OMPF to submit to the Army Review Boards Agency (ARBA) for corrections.

c. A letter from NPRC dated 21 April 2021, notified the applicant copies of his separation processing documents were provided and enclosed.

d. A copy of the applicant's service record (18 pages), listed below:

- DD Form 4 (Enlistment/Reenlistment Document)
- DA Form 3340-R (Request for Reenlistment or Extension in the Regular Army)
- DA Form 2-1 (Personnel Qualification Record)
- Enlisted Record Brief (ERB)
- Permanent Orders (PO) #50-01, 19 February 2004
- Separation Authority Approval, 25 June 2004
- Orders 210-0257, 28 July 2004
- DD Form 214
- DD Form 215 (Correction to DD Form 214)

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

a. He enlisted in the Regular Army on 9 August 2001.

b. His DA Form 2-1 (Personnel Qualification Record – Part II) and ERB show the applicant completed training and was assigned to Fort Hood, TX.

c. A DA Form 3340-R shows on 7 November 2003, the applicant submitted a request to extend his enlistment for the purpose of contingency deployment conditions and his request was approved on the same day.

d. Three DA Forms 4187 shows the applicant's status changed as follows:

- 18 November 2003 – present for duty (PDY) to absent without leave (AWOL)
- 18 December 2003 – AWOL to dropped from roll (DFR)
- 17 January 2004 – AWOL to PDY

e. The DD Form 616 (Report of Return Absentee) indicated the applicant surrendered to military control.

f. A DD Form 458 (Charge Sheet) shows charges were preferred against the applicant for one specification of AWOL; however, there is no signature from the applicant to annotate he was informed of the charge.

g. Two sets of orders show units within the 1st Cavalry Division received temporary change of station (TCS) orders in support of Operation Iraqi Freedom.

- Permanent Orders #026-01, 26 January 2004
- Permanent orders #50-01, 19 February 2004

h. An extract of DA Form 4430 (Department of the Army Report of Result of Trial) shows on 24 April 2004 the applicant was convicted by a special court-martial of:

- one specification of AWOL from approximately 18 November 2003 to 16 January 2004
- one specification of missing movement by design
- one specification of wrongful use of amphetamines on or about 14 November 2003

His sentence included reduction to private first class, E-3, and confinement for 30 days. The judge further recommended the accused's request to defer confinement be approved and if approved, the confinement be suspended, and the applicant be sent to Iraq with his unit.

i. The available service record was void of the convening authority's action on the SPCM.

j. On 25 June 2004, the convening authority noted the request for discharge for the good of the service was approved. Based upon his review of the applicant's record, he determined that the charges were sufficiently serious enough to warrant separation and that the applicant had no rehabilitative potential. He would be issued an under other than honorable conditions discharge and reduced to the lowest enlisted rank.

k. Orders 210-0257 dated 28 July 2004 discharged the applicant from active duty with an effective date of 2 August 2004.

l. On 2 August 2004, the applicant was discharged under the provisions of chapter 10 of AR635-200 with an under other than honorable conditions discharge. His DD Form 214 shows he completed 2 years, 10 months, and 22 days of active service.. He was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial," with reentry code 4. It also shows he was awarded or authorized:

- Global War on Terrorism Service Medal
- National Defense Service Medal
- Army Service Ribbon

m. A DD Form 215 (Correction to DD Form 214) issued on 12 January 2021 lists the following corrections to his DD Form 214 for the service period ending 2 August 2004.

- Block 12f (Foreign Service): add 0000 03 02 (3 months and 2 days)
- Block 18 (Remarks): Service in Kuwait/Iraq from 19 April 2004 to 18 July 2004

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

6. On 28 August 2020, the ABCMR rendered a decision in Docket Number AR20190015504. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust. The Board further determined the evidence presented was sufficient to warrant partial relief by adding the applicant's foreign service.

7. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

8. 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 in lieu of trial by court-martial.

9. 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:

1. The Board determined 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.

2. 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.

a. The evidence shows the applicant exhibited a pattern of misconduct consisting of a court-martial conviction and multiple civilian violations. As a result, his chain of command initiated separation action against him for unfitness due to his frequent involvement in incidents of a discreditable nature with civil or military authorities. The Board found no error or injustice in his separation processing.

b. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's determination finding no evidence the applicant had a service incurred mental health or other medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge for misconduct. Thus, there is no cause for a referral of this case to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge. Also, although the applicant provides letters of support from his employer and his pastor in support of a clemency determination, the Board determined such letters did not outweigh the serious misconduct he committed.

c. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation were 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 to amend the decision of the ABCMR set forth in Docket Number AR20190015504 on 28 August 2020.

8/14/2024

X [REDACTED]

CHAIRPERSON

[REDACTED]

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. 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

2. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states 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. Paragraph 3-7b (General Discharge) states 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 in lieu of trial by court-martial.

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/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//