

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 September 2024

DOCKET NUMBER: AR20240000962

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

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

DD Form 293 (Application for Army Discharge Review Board)

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, in effect, that he is asking the Board to upgrade his character of service.
3. A review of the applicant's service record shows the following:
  - a. On 9 June 1986, the applicant enlisted into the Regular Army for 4 years; he was 18 years old. Upon completion of initial entry training and the award of military occupational specialty 36C (Wire System Installer), orders assigned him to a signal company at Fort Bragg, NC (later renamed Fort Liberty). He arrived at his new unit, on 22 October 1986. At some point prior to August 1987, the applicant's leadership promoted him to private first class (PFC)/E-3.
  - b. On 18 August 1987, the applicant's unit reported him as absent without leave (AWOL); on 3 September 1987, he surrendered himself to his unit and returned to military control. On 10 September 1987, the applicant again departed from his unit in an AWOL status; on 20 October 1987, he returned to military control.
  - c. On 13 November 1987, the applicant's command preferred court-martial charges against him. The relevant DD Form 458 shows he was charged with for two specifications of violating Article 86 (AWOL), Uniform Code of Military Justice (UCMJ):

AWOL from 3 to 10 September 1987 (16 days) and 10 September to 20 October 1987 (40 days).

d. On 19 November 1987, after consulting with counsel, the applicant voluntarily the applicant requested discharge in-lieu of trial by court-martial under the provisions of chapter 10 (Discharge for the Good of the Service), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). In his request, he stated no one had subjected him to coercion and counsel had advised him of the implications of his request; the applicant further acknowledged he was guilty of the charges. He elected not to submit statements in his own behalf.

e. On 24 November 1987, the separation authority approved the applicant's separation request and directed his under other than honorable conditions discharge; additionally, the separation authority ordered the applicant's reduction to the lowest enlisted grade. On 3 December 1987, orders reduced the applicant from private (PV2)/E-2 to private (PV1)/E-1; (the applicant's service record does not reflect either the date or reason for his reduction to PV2).

f. On 8 December 1987, orders separated the applicant under other than honorable conditions. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 4 months, and 5 days of his 4-year enlistment contract, with two periods of lost time. The report additionally reflects the following:

- Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – Army Service Ribbon and a marksmanship qualification badge
- Item 25 (Separation Authority) – AR 635-200, chapter 10
- Item 26 (Separation Code) – "KFS"
- Item 27 (Reenlistment (RE) Code) – RE-3 and RE-3b
- Item 28 (Narrative Reason for Separation) – For the Good of the Service – In Lieu of Court-Martial

#### 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 1 year and 4 months of active service with 40 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 (AR) AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable character of service represented a separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when a Soldier's subsequent honest and faithful service, over a greater period, outweighed any disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

c. Section II (Secretarial Authority), Paragraph 5-3 (Policy). The separation of enlisted personnel was the prerogative of the Secretary of the Army. The discharge of any enlisted member of the Army for the convenience of the government was to be at the Secretary's discretion, with the issuance of an honorable or a general discharge certificate, as determined by the Secretary.

d. Chapter 10 (Discharge for the Good of the Service) applied to Soldiers who had committed an offense or offenses for which the punishment under the Uniform Code of Military Justice (UCMJ) included a punitive (i.e., bad conduct or dishonorable) discharge.

(1) Soldiers could voluntarily request discharge once charges had been preferred; commanders were responsible for ensuring such requests were personal decisions, made without coercion, and following being granted access to counsel. Commanders were to give the Soldier a reasonable amount of time to consult with counsel prior to making his/her decision.

(2) The Soldier made his/her request in writing, which certified he/she had been counseled, understood his/her rights, could receive an under other than honorable conditions character of service, and recognized the adverse nature of such a character of service. Consulting counsel was to sign the request as a witness.

3. The Manual for Courts-Martial, in effect at the time, showed punitive discharges were among the maximum punishments for violations of UCMJ Article 86 (Absent without leave (AWOL) for more than 30 days).

4. AR 600-200 (Enlisted Personnel Management System), in effect at the time, prescribed policies and procedures for enlisted promotions and reductions. Paragraph 6-11 (Other Reasons for Reductions – Approved for Discharge from Service under Other Than Honorable Conditions) stated commanders were to reduce Soldiers discharged under other than honorable conditions to the lowest enlisted grade; no board action was required.

5. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 (Certificate of Release or Discharge from Active Duty) preparation.

a. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in item 28 (Narrative Reason for Separation).

b. Additionally, they were to review AR 601-280 (Army Reenlistment Program) for the appropriate reenlistment (RE) code; (the 1983 revision of AR 601-280 removed RE codes, and DD Form 214 preparers instead referred to AR 601-210 (Regular Army and Army Reserve Enlistment Program)).

6. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with chapter 10, AR 635-200 were to receive an SPD of "KFS" and have, "For the Good of the Service – In Lieu of Court-Martial " entered in item 28 of their DD Form 214.

7. AR 601-280 (Total Army Reenlistment Program), in effect at the time, prescribed policies and procedures for the reenlistment of current and former Soldiers. Paragraph 2-19 (Waivable Disqualifications) stated the Commanding General, U.S. Army Military Personnel Center could approve a reenlistment waiver for former Soldiers who had been AWOL for more than 30 days.

8. AR 601-210, in effect at the time, outlined policies and procedures for the enlistment of Regular Army and Army Reserve Soldiers. It listed RE codes in Table 3-6 (Armed Forces RE Codes and RA (Regular Army) RE Codes); the table showed the following:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for reenlistment unless waiver consideration was permissible and was granted
- RE-3B – Waiver required due to the applicant having lost time

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 on the basis of 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.

10. AR 15-185 (ABCMR), currently in effect, states:

a. The ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, the ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

b. The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

//NOTHING FOLLOWS//