

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 September 2024

DOCKET NUMBER: AR20240000979

APPLICANT REQUESTS: reconsideration of his earlier request for upgrade of his under other than honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 21 November 2023
- Self-authored Statement, undated

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 AR2001055499 on 19 June 2001.

2. The applicant states he is requesting an upgrade of his discharge to receive a discount at a hardware store and to get his driver's license stamped "Veteran."

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

a. The DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he enlisted in the Regular Army on 26 June 1979. The available service record is void of the DD Form 4 (Enlistment/Reenlistment Document-Armed Forces of the United States). He was subsequently awarded military occupational specialty 11B, (Infantryman) and he attained the grade/pay grade specialist 4 (SP4)/E-4.

b. A DA Form 4187 (Personnel Action) shows on 4 August 1981, the applicant's duty status changed from dropped from roles (DFR) to attached. Section IV (Remarks) further noted the applicant surrendered to military authorities in Long Beach, CA on 4 August 1981.

c. A DA Form 3975 (Police Report), dated 4 August 1981, shows the applicant departed in an AWOL status from his unit, 101st Adjutant General Replacement Detachment, Fort Campbell, on or about 25 February 1981 and subsequently returned to military control at Fort Knox on or about 4 August 1981.

d. On 7 August 1981, court-martial charges were preferred against the applicant for one specification of AWOL from on or about 25 February 1981 until on or about 4 August 1981. The DD Form 458 (Charge Sheet) he was assigned to 101st Adjutant General Replacement Detachment, Fort Campbell.

e. On 10 August 1981, the applicant consulted with legal counsel and requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- he was making the request of his own free will
- maximum punishment
- he was guilty of at least one or more 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
- 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 to submit matters

f. His undated statement notes he was 20 years of age and achieved a 10th grade education. He joined the Army to get away from his element. As soon as he returned home, he had a job lined up with his uncle, and planned on going to trade school. His parents pressured him to return to the Army. He could not find a job while being AWOL. He went AWOL because he needed to be as close to his son as possible as he was only 2 years old. His mother was going to give him to his parents. When he returned from Korea, he could not stand being away from his son.

g. A DA Form 3822-R (Report of Mental Status Evaluation) shows on 10 August 1981 the applicant underwent a mental status evaluation. The psychiatrist noted he had the mental capacity to understand and participate in the proceedings and he met the retention requirements of chapter 3, Army Regulation 40-501 (Standards of Medical Fitness).

h. On 14 September 1981, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge for the good of the service under the provisions of AR 635-200, Chapter 10. He would be issued an under other than honorable conditions discharge and reduced to the lowest enlisted rank of private (E-1).

i. On 13 October 1981, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 1 year, 1 months, and 2 days of active service with 167 days of lost time. He was assigned separation code JFS and the narrative reason for separation listed as "Administrative Discharge Conduct Triable by Court-Martial," with reentry code 3.

4. 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.

5. On 19 June 2001, the ABCMR rendered a decision in Docket Number AR2001055499. The Board found the applicant voluntarily requested separation for the good of the service to avoid trial by court-martial, the proceedings were administratively correct, and in conformance with applicable regulations. The available service record shows the applicant had one nonjudicial punishment and 167 days of lost time. The Board noted the applicant did not meet the standards of acceptable conduct and performance of duty for Army Personnel. The applicant's request was denied.

6. By regulation, (AR 635-200) a member who has committed an offense or offenses, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, or, where required, after referral, until final actions by the court-martial convening authority. provided

7. 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. The Board found no error or injustice in his separation processing. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference in support of a clemency determination. Therefore, 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 to amend the decision of the ABCMR set forth in Docket Number AR2001055499 on 19 June 2001.

---

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 1-13 provided:

(1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Only the honorable characterization may be awarded a member upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) 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, military service obligation, or period for which called or ordered to active duty.

b. Chapter 10 stated a member who has committed an offense or offenses, the punishment of which under the UCMJ and the Manual for Court Martial, 1969 (Revised Edition) includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, or, where required, after referral, until final actions by the court-martial convening authority.

(1) A medical examination is not required but may be requested by the member under Army Regulation 40-501 (Medical Services – Standards of Medical Fitness), chapter 10. A member that requests a medical examination must also have a mental status evaluation before discharge.

(2) Commanders will insure that a member will not be coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. Consulting counsel will advise the member concerning:

- the elements of the offense or offenses charged
- burden of proof
- possible defenses
- possible punishments
- provisions of Chapter 10
- requirements of voluntariness
- type of discharge normally given under provisions of Chapter 10
- rights regarding the withdrawal of the member's request
- loss of Veterans Administration benefits
- prejudice in civilian life because of the characterization of the discharge

(3) The separation authority will be a commander exercising general court-martial jurisdiction or higher authority. However, authority to approve discharges in cases in which a member has been AWOL for more than 30 days and has been dropped from the rolls of his or her unit as absent in desertion, and has been returned to military control, may be delegated to the commander exercising special court-martial convening authority over the member.

(4) An under other than honorable discharge certificate normally is appropriate for a member who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate if such is merited by the member's overall record during the current enlistment.

2. 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//