

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 September 2024

DOCKET NUMBER: AR20240001176

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- 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)
- Self-Authored Statement
- Honorable Discharge Certificate
- Certificate of Achievement
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 an upgrade of his under other than honorable conditions discharge. He served under honorable conditions. Upon reenlisting, he was unable to be assigned to the Communications Center for reasons he was unaware of. He was assigned jobs unrelated to his military occupational specialty (MOS) and subsequently asked to be discharged. He completed basic combat training, advanced individual training, and was stationed in Stuttgart, Germany. He reenlisted and continued to serve further at Fort Ord, CA. The applicant further noted he was unable to serve within his MOS at Fort Ord and asked to return to Germany or another duty station. He became frustrated because he was not serving in his MOS and elected to go absent without leave (AWOL). He was AWOL from 29 June 1982 through 10 August 1982 and requested to be discharged.

3. The applicant provides:

a. An Honorable Discharge Certificate for his active service period through 6 August 1981.

b. A Certificate of Achievement for his outstanding performance while serving as a member of the Telecommunications Center at Robinson Barracks from 19 June 1979 through 25 October 1981.

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

a. He enlisted in the Regular Army on 30 January 1979.

b. A DD Form 4 (Enlistment/Reenlistment Document) shows he reenlisted in the Regular Army on 7 August 1981 for a period of 4 years in the grade of specialist (SPC), E-4.

c. His DA Form 2-1 (Personnel Qualification Record) shows the applicant served in Germany from 15 June 1979 through 27 October 1981.

d. Orders 077-427 dated 18 March 1981 directed the applicant, among others, be awarded primary MOS 72G (Automatic Data Telecommunications Center Operator) and primary MOS 72E (Tactical Telecommunications Center Operator) be withdrawn effective 1 March 1981.

e. The service record is void of the applicant's initial nonjudicial punishment; however, a DA Form 2627 (Record of Proceedings Under Article 15, UCMJ) dated February 1982, shows suspension of the punishment of reduction to private first class (PFC), E-3 imposed on 15 January 1982 was vacated. The reason for the vacation of the suspension of punishment was not listed.

f. Four DA Forms 4187 (Personnel Action) show the applicant's duty status changed as follows:

- 29 June 1982 – present for duty (PDY) to AWOL
- 28 July 1982 – AWOL to dropped from rolls (DFR)
- 11 August 1982 – DFR to PDY
- 16 August 1982 – effective date of DFR changed to 29 July 1982

g. The available service record is void of the DD Form 458 (Charge Sheet) and the separation processing documents, to include the separation authority approval.

h. On 23 September 1982, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 3 years, 6 months, and 11 days of active service with 43 days of lost time.

The narrative reason for separation listed as “Administrative Discharge Conduct Triable by Court-Martial.” Block 11 (Primary Specialty Number, Title, Years and Months) shows the applicant served as a 72G10 (Data Communications Switching Center Specialist) for 1 year and 7 months.

5. A review of the applicant’s record confirms administrative entries were omitted from his DD Form 214. The entries will be added to his DD Form 214 as administrative corrections and will not be considered by the Board.

6. 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.

7. By regulation (AR 635-200), 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 for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

8. 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 found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. 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 the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust. The Board concurs with the corrections described in the Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Other than the corrections addressed in Administrative Note(s) below, the Board determined 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 otherwise insufficient as a basis for correction of the records of the individual concerned.

X

CHAIRPERSON

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows his DD Form 214 omitted administrative entries in the Remarks block. As a result, amend the DD Form 214 by adding in item 18:

- "Soldier Has Completed First Full Term of Service"
- "Continuous Honorable Active Service from 19790130 to 19810806."

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 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.

3. Army Regulation 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for item 18 (Remarks):

a. Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment).

b. To determine if an enlisted Soldier has completed the first full term of enlistment, refer to the enlistment contract and any extensions to those initial enlistment documents and compare the term of enlistment to the net service in block 12c of the DD Form 214. If Soldier has completed or exceeded the initial enlistment, enter "HAS." If block 12c of the DD Form 214 is less than the Soldier's commitment, enter "HAS NOT."

c. Routinely, a RA Soldier should not be considered to have completed the first full term of service if separation occurs before the end of the initial contracted period of service. However, if a Soldier reenlists before the completion of that period of service, the first term of service is effectively redefined by virtue of the reenlistment contract. A

prior service enlistee is considered to be on a second term of military service, even if that Soldier fails to complete the current term of service, the appropriate entry is "HAS".

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), 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 for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

5. 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//