

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 October 2024

DOCKET NUMBER: AR20240001518

APPLICANT REQUESTS: in effect, an upgrade of his under other than honorable conditions discharge.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 30 January 1992

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 was having marital problems and he tried to keep his family together. He is now divorced.
3. In the processing of this case, an Army Review Boards Agency staff member requested the applicant's official military personnel file (OMPF) from the National Archives and Records Administration (NARA) in St. Louis, Missouri. According to the response received from NARA, his record is currently signed out and is unavailable for review at this time. Despite the lack of his OMPF, the applicant provided a fully constituted DD Form 214 for the Board to conduct a fair and impartial review of the applicant's petition.
4. The applicant entered active duty on 31 May 1977. Upon completion of initial entry training, he was awarded military occupational specialty 71L (Administrative Specialist).
5. The applicant was discharged on 30 January 1992, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of court-martial, in the rank/grade of private/E-1. His service

was characterized as under other than honorable conditions, with separation code KFS and reentry code RE-3. He completed 3 years, 9 months, and 23 days of net active service, with continuous honorable active service from 31 May 1977 to 27 August 1980. Dates of lost time during this period were 15 August 1977 to 5 September 1977, 22 September 1977 to 25 September 1977, 12 October 1977 to 30 October 1977, 27 March 1978 to 30 March 1978, 9 February 1981 to 11 February 1981, and 4 March 1981 to 27 August 1983. He was awarded or authorized the national Defense Service Medal and the Overseas Service Ribbon.

6. The issuance of a discharge under the provisions of Army Regulation 635-200, Chapter 10, required the applicant to have requested from the Army, voluntarily, willingly, and in writing, a discharge in lieu of trial by court-martial. It is presumed that all requirements of law and regulation were met, and the rights of the applicant were fully protected throughout the separation process. No evidence to the contrary has been provided.

7. The Board should consider the applicant's argument and/or evidence 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 Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with an offense, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. Based on a preponderance of the evidence, including the applicant's absent without leave periods from 15 August 1977 to 5 September 1977, 22 September 1977 to 25 September 1977, 12 October 1977 to 30 October 1977, 27 March 1978 to 30 March 1978, 9 February 1981 to 11 February 1981 and from 4 March 1981 to 27 August 1983, the Board concluded that the characterization 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 Army Board for Correction of Military Records (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. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. 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.

c. 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.

4. 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/NR) 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.

//NOTHING FOLLOWS//