

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 September 2024

DOCKET NUMBER: AR20240002091

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable and correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:

- a change to his narrative reason for separation from “in lieu of trial by court-martial” to “secretarial authority,” with the corresponding change made to his separation code
- a change to his reentry code from RE-4 to RE-1

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

- DD Form 149 (Application for Correction of Military Record)
- Legal Brief
- Exhibit 1, DD Form 214, for the period ending 7 January 2002
- Exhibit 2, DD Form 458 (Charge Sheet), dated 8 March 2001
- Exhibit 3, Memorandum, Subject: Request for Discharge, dated 3 December 2001
- Exhibit 4, statement of support, M.D.B.
- Exhibit 5, statement of support, D.F.
- Exhibit 6, statement of support, T.L.A.
- Exhibit 7, Academic Transcript, Liberty University, dated 18 January 2016
- Exhibit 8, Certificates of Achievement (8), Champions School of Real Estate, dated 26 July 2016 to 4 October 2016

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. Counsel states the applicant was going through difficult family and financial issues. He attempted to address his duties and was offered no help from the Army. He should not be stigmatized for circumstances that were out of his control.

a. In 1999, the applicant married a fellow service member. He and his wife were in an accident, totaling their car. The applicant had no transportation to work. He informed his chain of command but was offered no help. After a few weeks, he was able to get a ride. He received an Article 15 for being absent without leave (AWOL) and was reduced from E-3 to E-1. He purchased a used car. Following an incident parking the car, he was ticketed and fined for damages and fleeing the scene of an accident. Unable to keep up with the payments, a warrant was issued for his arrest.

b. The car died after several weeks. Once again, he had no transportation. He tried taking taxis and walking to base; however, the financial burden was too much, and walking was too strenuous. He borrowed a car from a friend and was pulled over for tinted windows, at which time the warrant was discovered. He was arrested and released three months later.

c. Due to transportation issues and service commitments, the applicant and his wife sent their daughter to live with her grandmother, who kept her for two years. Following an attempt to get their daughter back, the applicant was arrested for being AWOL. He was charged without an opportunity to seek counsel. He was told his discharge would be automatically upgraded in six months.

d. He was barred from reenlisting. His punishment was too harsh for his crime. An upgrade should be granted for reasons of fundamental fairness, given his situation and post-service conduct. He is a military spouse who supports his wife and their five children. His wife is currently serving as a drill sergeant. He has overcome personal and professional issues and has done better for himself and his family.

3. The applicant enlisted in the Regular Army on 24 July 1998 for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 13B (Cannon Crewmember).

4. The applicant was reported AWOL on 17 October 2000 and was subsequently dropped from the rolls on 16 November 2000. He was apprehended by civil authorities on 5 March 2001 and was returned to military control on that same date.

5. Court-martial charges were preferred against the applicant on 8 March 2001 for violation of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL, from on or about 16 October 2000 until on or about 5 March 2001.

6. The applicant consulted with legal counsel on 16 March 2001.

a. He was advised of the basis for the contemplated trial by court-martial, the

maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a bad conduct or dishonorable discharge, and the procedures and rights that were available to him.

b. Subsequent to receiving legal counsel, the applicant voluntarily, of his own free will and not subject to coercion, requested discharge under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10, in lieu of trial by court-martial. He acknowledged understanding that by requesting a discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws. He acknowledged though counsel advised him of his rights, that this was his decision.

c. He was further advised that there is no automatic upgrading nor review by any Government agency of a less than honorable discharge and that he must apply to the Army Discharge Review Board or the ABCMR if he wished for a review of his discharge. He realized that the act of consideration by either board does not imply that his discharge would be upgraded.

d. He was advised he could submit any statements he desired in his own behalf. He elected not to submit a statement.

7. The applicant's immediate commander recommended approval of the request for discharge and further recommended the issuance of a UOTHC discharge.

8. The separation authority approved the applicant's request for discharge on 10 December 2001, and directed the issuance of a UOTHC discharge.

9. The applicant was discharged on 7 January 2002, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. His DD Form 214 shows he completed 3 years and 24 days of net active service this period, with lost time from 16 October 2000 to 4 March 2001. His DD Form 214 further shows:

- Item 24 (Character of Service) – Under Other Than Honorable Conditions
- Item 26 (Separation Code) – KFS
- Item 27 (Reentry Code) – 4
- Item 28 (Narrative Reason for Separation) – In Lieu of Trial by Court-Martial

10. The Army Discharge Review Board reviewed the applicant's request for a discharge upgrade on 13 February 2004. After careful consideration, the Board determined the

applicant was properly and equitably discharged. His request for a change in the character of his discharge was denied.

11. The applicant provides:

- a. Exhibits 1 to Exhibit 3 contain service records, which are summarized in the Record of Proceedings above.
- b. Exhibit 4 to Exhibit 6 contain statements of support from Sergeant First Class (Retired) M.D.B., Colonel D.F., and Command Sergeant Major T.L.A., wherein the authors attest to the applicant's dedication and selflessness as a father. The decisions he made as a junior Soldier were guided by his desire to be a good father. He did not have good leadership, and Army policy did not support the needs of two married junior Soldiers. Nor was he given the opportunity to rehabilitate himself. He leads his family from the front and supports his wife who is currently a drill sergeant. His children, one of whom was accepted at West Point, are successful and excel as students. Since his discharge, he has continued his education, enrolled in Northwestern California University School of Law, and become a successful businessman.
- c. Exhibit 7 and Exhibit 8, highlight some of the applicant's post-service accomplishments, to include academic transcripts from Liberty University, dated 18 January 2016, and eight Certificates of Achievement from Champions School of Real Estate, dated 26 July 2016 to 4 October 2016.

12. Administrative separations under the provisions of Army Regulation 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial. An UOTHC character of service is normally considered appropriate. Regulatory guidance provides when an individual is discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial, "KFS" is the appropriate separation code.

13. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

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 counsel's statement, the applicant's 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 evidence of post-service

achievements and letters of support insufficient to support clemency. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation and the reason for his separation and associated codes 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 for correction of the records of the individual concerned.

  

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 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of Reenlistment Eligibility (RE) codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that:

- a. SPD Code "KFS" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of court-martial.
- b. SPD Code "KFF," Secretarial Authority, for voluntary discharges and "MFF," Secretarial Authority, for voluntary release from active duty or transfer are to be used only when Headquarters, Department of the Army (HQDA) message or other directive authorizes voluntary separation in an individual case or category of cases.

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

- a. Separations under paragraph 5-3 (Secretarial Plenary Authority) are the prerogative of the Secretary of the Army. This authority is exercised sparingly and seldom delegated. It is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army.
- b. 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.

- c. 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.
- d. 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.

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/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//