

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 November 2024

DOCKET NUMBER: AR20240002269

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions (UOTHC) discharge to an honorable discharge
- change of the narrative reason for his separation and corresponding Separation Code to reflect that he was discharged under "Secretarial Authority" rather than "In Lieu of Trial by Court-Martial"
- change of his Reentry Eligibility (RE) code from an "RE-4" to an "RE-3"

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Counsel brief and 15 Exhibits:
 - Exhibit 1 - DD Form 214 (Certificate of Release or Discharge from Active Duty)
 - Exhibit 2 - National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service)
 - Exhibit 3 - Self-authored statement, 8 November 2023
 - Exhibit 4 - DD Form 616 (Report of Return of Absentee), 16 January 2001
 - Exhibit 5 - DD Form 458 (Charge Sheet), 23 January 2001
 - Exhibit 6 - Request for Discharge In Lieu of Trial by Courts-Martial, 23 January 2001
 - Exhibit 7 - Headquarters, U.S. Army Armor Center and Fort Knox, Fort Knox, KY memorandum, Subject: Appointment as Special Court-Martial Convening Authority and Delegation of Approval Authority for Chapter 10 Discharge Requests, 1 October 2001
 - Exhibit 8 - Headquarters, U.S. Army Personnel Control Facility, U.S. Army Armor Center and Fort Knox, Fort Knox, KY memorandum, Subject: Request for Discharge In Lieu of Trial by Courts-Martial [the applicant], 2 December 2001
 - Exhibit 9 - Headquarters, U.S. Army Garrison, U.S. Army Armor Center and Fort Knox, Fort Knox, KY memorandum, Subject: Request for Discharge In Lieu of Trial by Courts-Martial, 13 December 2001
 - Exhibit 10 - Letter from R.G.

- Exhibit 11 - Letter from W.R.
- Exhibit 12 - Letter from T.D.
- Exhibit 13 - Letter from I.S.
- Exhibit 14 - Letter from M.A.
- Exhibit 15 - University transcript

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 provides a synopsis of his military service in a statement enclosed as Exhibit 3. He states, in part:

a. He joined the Army to help his family financially and also to learn leadership because his father was absent from their home. He felt the military would give him these things and much more. When he first joined the military it was a great new learning experience. He met friends whom he is still close to and learned skills that he still carries with me. He was also fortunate enough to travel to a few different places during his time in the service.

b. The downside to his career in the Army is that it was cut short because he went absent without leave (AWOL). His decision to do so was in haste and bad taste. He was young and felt his leadership let him down. He became a young father of two children. Their mother, who was his partner at the time, was unfaithful and that put a strain on his life at home. He reached out to his leadership numerous times for solutions and guidance, but in turn he was repeatedly sent on field deployments, which created further strain on his situation at home. His fellow Soldiers informed him that they would see one of his noncommissioned officers (NCO's) visiting his home during his deployments. Discovering this destroyed him and also his desire to continue his career. He had come to the military to find leadership and guidance, but instead, he was let down by the person who was supposed to lead him. So, he made a bad decision and decided to leave.

c. Following his separation from the military, he worked at a few different places. He decided to further his education and to put myself in a position to help and guide youth in the way he desired to be guided when he was young. He is glad to say that he accomplished both of those goals and is still working to create more opportunities in this spectrum of things.

d. He obtained a Bachelor's degree and a Master's degree and is considering completing a Doctorate. He has a company that assists musical artists of all genres with their careers. They teach them about publishing and distribution, and help with engineering projects, visual products for their music, and preparing them for release. They also mentor youth and create employment opportunities for them as well. They have been doing this for about 10 years.

e. The applicant indicates on his DD Form 149 that mental health conditions are related to his request.

3. Counsel contends the applicant's petition should be granted on the basis of material error made by the applicant's chain of command and the resulting material injustice. As a preliminary matter, the applicant does not offer the following as an excuse or justification for going AWOL; the applicant takes full responsibility for his act of going AWOL and acknowledges that he should not have done this. However, the conditions which pushed him to commit this indiscretion are relevant. The applicant attempted to do things the right way in receiving mentorship from his command. Unfortunately, the applicant was met with more field training exercises and deployments which took him out of the home without any real guidance from his leadership. According to R.G., another Soldier in the applicant's unit, the applicant attempted to reach out to his command for help; however, none was provided.

a. While one could see this as the Command allowing the applicant to escape a caustic environment, the issue is the lack of care for the applicant's children as they were just born. Not only this, but the applicant's realization that his NCO was the other party involved in his partner's infidelity erodes good order and discipline, and ultimately pushed the applicant to leave post. He did not leave just on a whim; he left because he felt stuck with no other alternative in mind. As he will admit, this decision was short-sighted but fueled by sympathetic reasons for his flight. Furthermore, the applicant's case is one where he wanted to return to post to 'face the music,' instead of continuing to be a deserter. With this in mind, his command could have engaged in rehabilitative acts to put the applicant back on track, especially considering that he was charged roughly a year after his return. There exists no evidence to suggest that the applicant received any rehabilitative treatment, and there is no evidence that he continued to commit misconduct in the year in between turning himself in and the date in which he was charged. While this does not excuse his actions, the applicant could have benefitted from more leadership and care during his time in the Army.

b. The applicant's overall service, medical conditions, and post-service accomplishments outweigh his discharge. He admits his conduct was wrong and has bounced back through his post-service conduct. As this Honorable Board is aware, an applicant's post-service conduct may be considered when determining whether an applicant is warranting a discharge upgrade. In this scenario, especially considering the

guidance issued in the Wilkie Memo, the applicant has reached his burden to show the need for an upgrade.

c. Counsel provides a brief the following Exhibits:

- (1) Exhibit 1 - The applicant's DD Form 214, which provides a synopsis of the applicant's service in the Regular Army including his military training, awards and decorations, and the nature of his discharge.
- (2) Exhibit 2 - The applicant's NGB Form 22 which provides a synopsis of the applicant's service in the Alabama Army National Guard (ALARNG) including his military training, awards and decorations, and the nature of his separation.
- (3) Exhibit 3 - the applicant's previously discussed self-authored statement.
- (4) Exhibit 4 - DD Form 616 which shows details regarding the applicant's return to military control following his period of AWOL.
- (5) Exhibit 5 - DD Form 458, dated 10 January 1991, which provides a summary of the applicant's offenses.
- (6) Exhibit 6 - The applicant's request for discharge in lieu of trial by court-martial, dated 23 January 2001.
- (7) Exhibit 7 - Headquarters, U.S. Army Armor Center and Fort Knox, Fort Knox, KY memorandum, Subject: Appointment as Special Court-Martial Convening Authority and Delegation of Approval Authority for Chapter 10 Discharge Requests, dated 1 October 2001. This memorandum shows, in part, authority was delegated to the Garrison Commander to be a special court-martial approving authority and to approve requests for discharge for the good of the service submitted by AWOL Soldiers assigned to the Special Processing Company, U.S. Army Personnel Control Facility, Fort Knox, KY.
- (8) Exhibit 8 - Headquarters, U.S. Army Personnel Control Facility, U.S. Army Armor Center and Fort Knox, Fort Knox, KY memorandum, Subject: Request for Discharge In Lieu of Trial by Courts-Martial [the applicant], dated December 2001, which shows the applicant's immediate commander's recommendation regarding his request for discharge.
- (9) Exhibit 9 - Headquarters, U.S. Army Garrison, U.S. Army Armor Center and Fort Knox, Fort Knox, KY memorandum, Subject: Request for Discharge In Lieu of Trial by Courts-Martial, 13 December 2001, which shows the separation authority's decision regarding the applicant's request for discharge.

(10) Exhibit 10 - A letter from R.G., a fellow former Soldier who was the applicant's neighbor at the time, who provides favorable comments about the applicant and states he witnessed firsthand how the applicant reached out for help from his unit, but none was provided.

(11) Exhibit 11 - A letter from W.R., a former Soldier who served with the applicant at the time, who attests the applicant is positive, earnest, and professional at all times. He was an upright Soldier of high character and a team player.

(12) Exhibit 12 - A letter from T.D., a former Soldier who served with the applicant at the time, who attests he was an awesome Soldier who always achieved the maximum scores on his Physical Fitness Tests and scored high at the weapons range. He was always willing to help friends and family. He witnessed firsthand how the applicant reached out for help from his unit, but none was provided.

(13) Exhibit 13 - A letter from I.S., a current NCO who served with the applicant at the time, who states the applicant was a very motivated, well-disciplined, and hardworking Soldier. He demonstrated good character, patriotism, and proper military courtesy. The applicant continues to carry himself in a respectable and compassionate manner toward others.

(14) Exhibit 14 - A letter from MA, the applicant's County Commissioner, who attests the applicant is a leader in his community and is always willing to lend a helping hand whenever needed.

(15) Exhibit 15 - A university transcript shows the applicant was conferred a Bachelor of Arts degree in Public Relations and Marketing on 16 October 2017; and a Master of Arts degree in Organizational Management on 1 April 2019.

4. The applicant's NGB Form 22 shows he enlisted in the ALARNG on 20 June 1996 and served until he was honorably discharged on 20 October 1997 and transferred to U.S. Army Reserve Control Group (Annual Training). He held the rank/pay grade of private first class (PFC)/E-1 at the time.

5. On 18 November 1998, the applicant enlisted in the Regular Army in the rank/grade of PFC/E-3 for a period of 3 years. He was assigned to a unit Hunter Army Airfield, GA. He was advance to specialist (SPC)/E-4 on an unspecified date; the highest rank/grade he held while serving.

6. The applicant's duty status was changed from Present for Duty (PDY) to AWOL effective 18 July 2000; and from AWOL to Dropped from Rolls (DFR) effective 17 August 2000. He was also reported to law enforcement agencies as a Deserter/Absentee wanted by the Armed Forces.
7. A DD Form 616 shows the applicant's duty status was changed from DFR to PDY when he surrendered to military authorities at Hunter Army Airfield, GA on 16 January 2001.
8. A DD Form 458 shows on 24 January 2001, court-martial charges were preferred against the applicant for violation of Article 86 of the Uniform Code of Military Justice (UCMJ) by on or about 18 July 2000, without authority, absenting himself from his unit and remaining so absent until on or about 16 January 2001.
9. On 23 January 2001, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, for the good of the service in lieu of trial by court-martial. He indicated that prior to completing this request, he consulted with legal counsel and was advised of the basis for the trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him. He elected not to submit statements in his own behalf.
10. On 2 December 2001, the applicant's immediate commander recommended approval of his request with the issuance of a discharge UOTHC.
11. On 13 December 2001, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial, with his service characterized as UOTHC. He further directed the applicant be reduced from SPC/E-4 to PV1/E-1 prior to the execution of the discharge. The applicant was reduced to PV1/E-1 the same day.
12. Orders and the applicant's DD Form 214 show he was discharged on 14 January 2002, in the rank/grade of PV1/E-1, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "In Lieu of Trial by Court-Martial" with separation code "KFS" and reentry code "4." He was credited with completing 2 years, 7 months, and 25 days of net active service this period. He had time lost due to AWOL from 18 July 2000 to 15 January 2001. He did not complete his first full term of service.
13. On 29 July 2024, a member of the Army Review Boards Agency staff requested the applicant provide copies of medical documents in support of his mental health issues.
14. On 6 August 2024, the applicant's counsel provided a response wherein he stated, during the applicant's service he suffered from frustration and despair of his home life and service-related stressors. At no point did the applicant receive a diagnosis for post-

traumatic stress disorder (PTSD), depression, or other mental health conditions. He simply outlined the stressors in his life to show what fueled his decision to go AWOL. As such, the applicant does not have any medical records relevant to his application.

15. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

16. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition. By regulation, an applicant is not entitled to a hearing before the Board.

17. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable, a change in the narrative reason to Secretarial Authority, and a change in his RE code from 4 to 3. He did not select any contention on his application as related to his request.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant's NGB Form 22 shows he enlisted in the ALARNG on 20 June 1996 and served until he was honorably discharged on 20 October 1997 and transferred to U.S. Army Reserve Control Group (Annual Training).
- On 18 November 1998, the applicant enlisted in the Regular Army in the rank/grade of PFC/E-3 for a period of 3 years.
- The applicant's duty status was changed from Present for Duty (PDY) to AWOL effective 18 July 2000; and from AWOL to Dropped from Rolls (DFR) effective 17 August 2000. He was also reported to law enforcement agencies as a Deserter/Absentee wanted by the Armed Forces.
- A DD Form 616 shows the applicant's duty status was changed from DFR to PDY when he surrendered to military authorities at Hunter Army Airfield, GA on 16 January 2001.
- A DD Form 458 shows on 24 January 2001, court-martial charges were preferred against the applicant for violation of Article 86 of the Uniform Code of Military Justice (UCMJ) by on or about 18 July 2000, without authority, absenting himself from his unit and remaining so absent until on or about 16 January 2001.
- On 23 January 2001, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, for the good of the service in lieu of trial by court-martial.

- Orders and the applicant's DD Form 214 show he was discharged on 14 January 2002, in the rank/grade of PV1/E-1, under the provisions of Army Regulation 635-200, Chapter 10, by reason of " In Lieu of Trial by Court-Martial" with separation code "KFS" and reentry code "4." He was credited with completing 2 years, 7 months, and 25 days of net active service this period. He had time lost due to AWOL from 18 July 2000 to 15 January 2001. He did not complete his first full term of service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he joined the Army to help his family financially and learn leadership because his father was absent from their home. He felt the military would give him these things and much more. When he first joined the military, it was a great new learning experience. He met friends whom he is still close to and learned skills that he still carries with him. He was also fortunate enough to travel to a few different places during his time in service. The downside to his career in the Army is that it was cut short because he went absent without leave (AWOL). His decision to do so was in haste and bad taste. He was young and felt his leadership let him down. He became a young father of two children. Their mother, who was his partner at the time, was unfaithful and that put a strain on his life at home. He reached out to his leadership numerous times for solutions and guidance, but in turn he was repeatedly sent on field deployments, which created further strain on his situation at home. His fellow Soldiers informed him that they would see one of his noncommissioned officers (NCO's) visiting his home during his deployments. Discovering this destroyed him and also his desire to continue his career. He had come to the military to find leadership and guidance, but instead, he was let down by the person who was supposed to lead him. So, he made a bad decision and decided to leave.

d. Due to the period of service no active-duty electronic medical records were available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. There was no electronic medical documentation available for review and the applicant did not submit any post-service medical documentation evidencing any BH condition. On 29 July 2024, a member of the Army Review Boards Agency staff requested the applicant provide copies of medical documents in support of his mental health issues. On 6 August 2024, the applicant's counsel provided a response stating at no point was the applicant diagnosed with any mental health conditions and he did not have any medical records relevant to his application.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a BH condition during military service that mitigates his misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? No. The applicant did not select any condition on his application as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for any mental health condition. And while the applicant described experiencing frustration and despair related to home life and service-related stressors, there is no evidence of any mitigating BH condition.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the relatively short term of honorable service completed prior to the lengthy AWOL offense, which the medical advisor found no mitigation for such misconduct, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service, narrative reason for separation, separation code and or reentry (RE) code.

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 (USC), Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. 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. prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.
4. 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 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

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) states that separation codes are three-character alphabetic combinations that identify reasons for and types of separation from active duty. Separation codes and corresponding narrative reasons are aligned with applicable regulatory authority paragraphs. The regulation provides that the separation code "KFS" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, by narrative reason of "in lieu of trial by court-martial."

6. 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 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

7. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

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

//NOTHING FOLLOWS//