

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 October 2024

DOCKET NUMBER: AR20240002669

APPLICANT REQUESTS:

- an upgrade of his characterization of service
- a personal appearance before the Board by video/telephone

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)

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 followed his chain of command and instructions from his first sergeant.
3. A review of the applicant's service records show:
  - a. He enlisted in the Regular Army on 15 October 1986.
  - b. The applicant's duty status changed on the following dates:
    - Present for Duty (PDY) to Absent Without Leave (AWOL) – 30 May 1996
    - AWOL to PDY – 3 June 1996
    - PDY to AWOL – 17 June 1996
    - AWOL to Dropped from Rolls (DFR) – 17 July 1996
    - DFR to attached/PDY – 17 July 1997; he surrendered to military authorities at Fort Knox, KY
  - c. An undated memorandum, which shows the applicant admitted that he was AWOL from the U.S. Army from on or about 17 June 1996 to on or about 17 July 1997.

He declared that his military defense counsel had explained to him to his complete understanding and satisfaction, all the legal and social ramifications of the type of discharge and what it would mean to him in the future.

d. Court-martial charges were preferred against the applicant on 21 July 1997. His DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 17 June 1996 to on or about 17 July 1997.

e. On 21 July 1997, after consulting with legal counsel, the applicant voluntarily requested discharge in lieu of trial by court-martial under Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. The applicant acknowledged that he made the request of his own free will and was not coerced by any person. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to at least one of the charges 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 was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veteran's Administration, he could be deprived of his rights and benefits as a veteran under both Federal and State law and encounter substantial prejudice in civilian life because of an under other than honorable discharge. He understood that there was no automatic upgrading or automatic review of a less than honorable discharge by any government agency or the ABCMR. He elected to submit a statement in his own behalf.

f. On 21 July 1997, the applicant requested that he be granted a general discharge in conjunction with his request for discharge in lieu of trial by court-martial. He stated, in effect:

(1) He left his unit and remained AWOL for a variety of reasons. While assigned to Fort Richardson, he learned that his wife was having an affair with another man while he was in the field, which led to him sending his wife and two children home early. He had a great deal of difficulty losing his family and everything he had worked for. He ensured his children were provided for, but it resulted in him being left with very little, so he had to declare bankruptcy. The stigma associated with bankruptcy and the situation with his spouse, led him to begin drinking a great deal. He received a driving while intoxicated (DWI) and lost his rank.

(2) When he returned to Fort Bragg from Alaska all the Soldiers who were previously junior to him were now his superiors. All of that, with the discovery of his wife's affair, the loss of his family, bankruptcy, and the results of the Article 15, all occurred within a period of 100 days. He asked that the battalion commander consider his 10 years of service. He understood that separation was appropriate, and he felt that

a general discharge was appropriate as well when you take into consideration the circumstances surrounding him leaving the military.

g. On 25 August 1997, the immediate commander recommended approval and issuance of a discharge under other than honorable conditions.

h. The separation authority approved the recommended discharge on 5 September 1997, directed the applicant be reduced to the lowest enlisted grade, and issued an under other than honorable conditions discharge.

i. The applicant was discharged on 26 September 1997. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, chapter 10, in the rank/grade of private (PV1)/E-1, and his service was characterized as under other than honorable conditions. He completed 9 years, 10 months, and 4 days of net active service during the covered period. Additionally, his DD Form 214 shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Commendation Medal (2nd Award), Army Achievement Medal (4th Award), National Defense Service Medal, Southwest Asia Service Medal with two bronze service stars, Humanitarian Service Medal, Noncommissioned Officer Professional Development Ribbon, Army Service Ribbon, Overseas Service Ribbon, Kuwait Liberation Medal – Saudi Arabia, Kuwait Liberation Medal – Kuwait, Combat Infantryman Badge, Expert Infantryman Badge, Parachutist Badge, and Tow Gunner Expert Qualification Badge.
- Item 18 (Remarks): Member has completed first full term of service.
- Item 26 (Separation Code): KFS
- Item 27 (Reentry Code): 3
- Item 29 (Dates of Time Lost During this Period): 30 May 1996 – 2 June 1996; 17 June 1996 – 15 July 1997

4. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge processing within that Board's 15-year statute of limitations.

5. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

**BOARD DISCUSSION:**

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 absenting himself from his unit from 17 June 1996 to 17 July 1997, 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 noted the applicant's total service period of 9 years, 10 months, and 4 days and that his period of being absent was subsequent to his tour in Desert Shield/Desert Storm. Based on the totality of the applicant's service and a preponderance of the evidence, the Board granted relief to upgrade the applicant's characterization of service to under honorable conditions (General).

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 26 September 1997 to show an under honorable conditions (General) characterization of service.

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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 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 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 provided that a Soldier who committed an offense or offenses, the punishment for which 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 Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. 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.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) and the SPD/Reentry code cross reference table provide 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. In effect at the time, the regulation prescribed shows: Soldiers separated under the provisions of Army Regulation 635-200, chapter 10, with a narrative reason of in lieu of trial by court-martial would receive the separation code "KFS."

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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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.

5. 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.

//NOTHING FOLLOWS//