

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 November 2024

DOCKET NUMBER: AR20240002719

APPLICANT REQUESTS:

- reconsideration of his previous request to change his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 19 June 2000 to reflect honorable vice under other than honorable conditions (UOTHC)
- a personal appearance before the Board via telephone/video

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

- DD Form 149 (Application for Correction of Military Record)
- Orders Number 166-0153, 14 June 2000
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Ivy Tech State College, Associate of Applied Science, 7 May 2005
- Orders Number 09-072-00022, 13 March 2009
- Orders Number 10-036-00012, 5 February 2010
- Memorandum, subject: Award of the Army Reserve Components Achievement Medal, 25 August 2010, 15 May and 12 December 2016
- Dissolution Decree, 12 June 2015
- Two-Certificate of Achievement, 10 July 2014 and 31 July 2015
- Army Achievement Medal, 9 September 2016 and 5 August 2020
- Adoption Decree, 13 April 2021
- Marriage Record, 11 July 2022
- Orders Number 22-087-00057, 28 March 2022

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20200007775 on 21 January 2021.
2. The applicant states, in effect, after his discharge, he reenlisted into the U.S. Army Reserve (USAR) in 2006 and have been serving ever since. He went absent without leave (AWOL) because his ex-wife took his son and unborn daughter and went home.

He made the decision to follow them. He has turned his life around. He reenlisted in the USAR and got his associate degree. He stayed in the Army, got a divorce and continued to improve his life. He remarried, adopted two foster boys and purchased a home. He went through an apprenticeship to be an electrician while continuing to serve. He now has twenty plus years [in the service].

3. The applicant provides:

a. Orders 166-0153, issued by Headquarters, U.S. Army Armor Center and Fort Knox, KY, 14 June 2000, that shows he was assigned to the U.S. Army Transition Center, Fort Knox, KY, effective 19 June 2000.

b. Ivy Technology Tech State College, Degree of Associate of Applied Science in Manufacturing Industrial Technology, 7 May 2005.

c. Orders Number 09-072-00022, issued by Headquarters, 95th Training Division (IET), 13 March 2009, that shows his promotion from specialist to sergeant (SGT).

d. Orders Number 10-036-00012, issued by Headquarters, 88th Regional Support Command, 5 February 2010, that shows his promotion from SGT to staff sergeant.

e. Memorandum, issued by 1st Battalion, 334th Regiment, 4th Brigade, 95th Division, 25 August 2010, that shows the applicant completed the service requirements for award of the Army Reserve Component Achievement Medal for the period of June to September 2011.

f. His Certificate of Achievement for his participation from 8 June 2014 to 10 July 2014 in the cadet summer training first aid committee, 10 July 2014.

g. The Dissolution Decree of his marriage, 12 June 2015.

h. His Certificate of Achievement, for his contribution and support for the 1st Battalion, 334th Regiment Training Support Battalion while assigned as a Unit Prevention Leader from 21 March 2010 to 31 July 2015.

i. His Army Achievement Medal, for exceptionally meritorious service as an Ammo Non-Commissioned Officer in support of cadet summer training 2016 for the period 10 June to 1 July 2016.

j. Memorandum, issued by 1st Battalion, 334th Regiment, 3rd Brigade, 95th Division, 12 December 2016 that shows the applicant completed the service requirements for award of the Army Reserve Component Achievement Medal for the period November 2006 to November 2016.

k. His Army Achievement Medal for outstanding achievement as the instructor on Tactics Lane for the period 21 July 2020 to 7 August 2020.

l. The Adoption Decree, that shows the adoption of his minor children C____ W____ and A____ W____, 13 April 2021.

m. His Marriage Record that shows his application for marriage on 11 July 2022.

3. Review of the applicant's record shows:

a. He enlisted in the Regular Army on 14 March 1991.

b. He was honorably released from active duty, and transferred to the U. S. Army Reserve Control Group, on 13 March 1994 due to the completion of required active service. His DD Form 214 shows he completed 3 years of net active service.

c. He enlisted in the Regular Army on 29 July 1997.

d. Court-martial charges were preferred against the applicant on 24 March 1999, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with being absent without leave (AWOL) from on or about 3 March 1998 through on or about 21 March 1999.

e. After consulting with legal counsel, he requested a discharge for the good of the service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged with an UOTHC Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a Veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life
- he elected not to submit matters on his own behalf

f. On a date unknown, the applicant's command recommended approval of his request for discharge in lieu of trial by court-martial with an UOTHC discharge.

g. On 18 December 1999, the separation authority approved the applicant's request for discharge for the good of the service under the provisions of AR 635-200, Chapter 10. He would be issued an UOTHC Discharge Certificate and reduced to the lowest enlisted rank of private/E-1.

h. On 19 June 2000, he was discharged from active duty with an UOTHC characterization of service. His DD Form 214 shows:

(1) He completed 1 year, 9 months and 28 days net active service with lost time from 3 March 1998 to 20 March 1999.

(2) He completed 3 years of total prior active service.

(3) He was awarded the Army Achievement, Army Good Conduct Medal, National Defense Service Medal, Army Service Ribbon, and the Overseas Service Ribbon.

(4) He was assigned separation code KFS (For the Good of the Service) and the authority and reason for separation listed as AR 635-200, Chapter 10, with reentry code 3.

i. His record does not contain enlistment orders for the USAR dated 2006.

j. In a prior request ABCMR Docket Number AR20200007775 on 21 January 2021, the Board denied the applicant's request. The Board carefully considered the applicant's request, supporting documents, evidence in the records and published DOD guidance for consideration for discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct and the reason for his separation. The Board found insufficient evidence of in-service mitigation to overcome the misconduct. The Board determined that the character of service the applicant received upon separation was not in error or unjust.

k. On 23 March 2022, the applicant received a notification of eligibility for retired pay at non regular retirement (20-year letter).

l. A Retirement Accounting Statement, 12 December 2023 that shows in part:

- the applicant was in a "break" status from 20 June 2000 to 12 November 2006
- the applicant was in a "TPU" status from 13 November 2006 to 9 September 2023

m. Department of the Army, Orders Number 0008539462.00, 20 June 2024 shows in part the applicant's:

- Character of service: A – Honorable
- Estimated Total Service: 19 years, 3 months and 28 days
- Total Active Federal Service: 5 years, 9 months and 7 days

4. Army Regulation 635-200, states in Chapter 10 that this is a voluntary request for discharge for the good of the service from the Soldier to avoid a trial by court-martial. An UOTHC character of service is normally considered proper. When an individual is discharged under the provisions of AR 635-200, Chapter 10, for the good of the service - in lieu of trial by court-martial, "KFS" is the appropriate separation code.

5. 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.

6. 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.

7. The Board should consider the applicant's statement 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 not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon reviewing the applicant's petition and available military records, the Board determined that there was insufficient evidence of in-service mitigating factors to outweigh the misconduct of AWOL. While acknowledging the applicant's post-service achievements, including earning an associate degree and adopting two sons, the Board noted that no character references or letters of support were provided that might have mitigated the circumstances surrounding his discharge.

2. Additionally, the Board recognized the applicant's continued service and the issuance of a 20-year letter confirming retirement eligibility. However, based on the

applicant's request for discharge under Chapter 10 for the good of the service, the Board concluded that the applicant had not demonstrated, by a preponderance of evidence, an error or injustice warranting the requested relief—specifically, an upgrade of the under other than honorable conditions (UOTHC) discharge to an honorable discharge. As a result, the Board denied relief.

3. 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
XX:	XXX	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20200007775 on 21 January 2021.

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. 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.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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.

b. 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.

c. Chapter 10 of that regulation provided, in pertinent part, that a member who had committed an offense or offenses for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

3. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, 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 grounds.

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, 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.

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 (RA) and the Reserve Components.

a. Chapter 3 prescribes basic eligibility for prior service applicants for enlistment and includes a list of Armed Forces Reentry (RE) Codes, including RA RE Codes.

- Re Code of “1” (RE-1) applies to persons qualified for enlistment if all other criteria are met
- RE-3 applies to persons ineligible for reentry unless a waiver is granted
- RE-4 applies to persons who have a nonwaiverable disqualification and are ineligible for enlistment

b. Chapter 4 states recruiting personnel have the responsibility for initially determining whether an individual meets current enlistment criteria and are responsible for processing waivers.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The SPD code KFS is to be used for RA Soldiers discharged for the good of the service in lieu of court martial under the provisions of Army Regulation 635-200, chapter 10.

6. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the SPD code KFS has a corresponding RE Code of "3."

//NOTHING FOLLOWS//