

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 November 2024

DOCKET NUMBER: AR20240003327

APPLICANT REQUESTS:

- an upgrade of his characterization of service from under other than honorable conditions to honorable
- a personal appearance before the Board by video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty),
22 November 1979
- DD Form 794A (Under Other Than Honorable Conditions Discharge Certificate),
22 November 1979

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 his best friend lived with him and his wife and his best friend and his wife were having an affair. The applicant found out about the affair and made his exfriend move out. He went to the first sergeant, and he said he could not do anything. The only thing he thought he could do to keep them apart was to take her to her mom's. He was a stupid 18, going on 19, year old. They were still married. His son told him about this. They had two kids. He wishes he had done things differently now that he is older.
3. The applicant provides a copy of his DD Form 214 and his Under Other Than Honorable Conditions Discharge Certificate.
4. A review of the applicant's service record shows:

- a. He enlisted in the Regular Army on 16 November 1976.
- b. The applicant's duty status changed on the following dates:
 - Present for Duty (PDY) to Absent without Leave (AWOL) – 14 June 1979
 - AWOL to PDY – 11 July 1979
 - PDY to AWOL – 19 July 1979
 - AWOL to Dropped from the Rolls (DFR) – 23 July 1979
- c. DA Form 3836 (Notice of Return of US Army Member from Unauthorized Absence) shows he surrendered to military authorities on 9 October 1979.
- d. His duty status changed from DFR to attached, returned to military control on 9 October 1979.
- e. Court-martial charges were preferred against the applicant on 18 October 1979. His DD Form 458 (Charge Sheet) shows he was charged with:
 - one specification of being AWOL from on or about 14 June 1979 to on or about 11 July 1979
 - one specification of being AWOL from on or about 19 July 1979 to on or about 9 October 1979
- f. A medical examination for separation/retirement statement, dated 18 October 1979, shows the applicant did not desire a separation medical examination.
- g. On 19 October 1979, after consulting with legal counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial under Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. The applicant acknowledged 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 were 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 other than honorable discharge. He elected not to submit a statement in his own behalf.

h. The applicant underwent a mental status evaluation on 26 October 1979 and was psychiatrically cleared for any administrative action deemed appropriate by his commander.

i. On 8 November 1979, the immediate commander recommended approval of the discharge and issuance of a discharge under other than honorable conditions. The commander noted that the applicant had become disillusioned with the military, and further retention would not be in the best interest of the Army.

j. The separation authority approved the recommended discharge on 15 November 1979, directed the applicant be reduced to the lowest enlisted grade, and be issued an under other than honorable conditions discharge.

k. The applicant was discharged on 22 November 1979. His DD Form 214 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 2 years, 9 months, and 29 days of net active service this period. This form also shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Sharpshooter Marksmanship Qualification Badge (M-16) and the Sharpshooter Qualification Badge (hand grenade)
- Item 26 (Separation Code): JFS
- Item 27 (Reenlistment Code): RE 3B
- Item 29 (Dates of Time Lost During This Period): 14 June 1979 – 10 July 1979; 19 July 1979 – 8 October 1979

5. There is no indication the applicant applied to the Army Discharge Review Board (ADRB) for review of his discharge or upgrade of his characterization of service within that Board's the 15-year Statute of Limitations.

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

7. The pertinent Army regulation in effect at the time provided discharges under the provision of AR 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

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 review of the applicant's request and available military records, the Board found insufficient evidence of in-service mitigating factors to overcome the misconduct of AWOL.

2. The applicant provided insufficient evidence of post-service honorable conduct or character letters of support that might have mitigated the discharge characterization. The Board agreed the applicant has 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 a honorable discharge. Therefore, 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
■	■	■	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 (AR) 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 member 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 member, regardless of whether the charges are referred to a court-martial and regardless of the type of court-martial to which the charges may be referred. The request for discharge may be submitted at any stage in the processing of the charges until final action on the case by the court-martial convening authority. Commanders will ensure that a member is not coerced into submitting a request for discharge for the good of the service. The member 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 member may elect to submit a request for discharge for the good of the service. The member 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 member who is discharged for the good of the service. However, the discharge authority may direct an honorable or general discharge if such are merited by the member's overall record during the current enlistment.

b. An honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

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

3. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 10 conduct triable by court-martial would receive a separation code of "JFS."

4. AR 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
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted

- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

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 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.

6. 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//