

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 October 2024

DOCKET NUMBER: AR20240003399

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to honorable.
- a change in his separation code
- a change in his reentry (RE) code

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)
- Self-Authored Statement
- Five letters of character
- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Entitlement Letter

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 during his military service he performed admirably, rising from private (PVT) E-1 to private first class (PFC) E-3 within one year and two months, as noted in his DA Form 2-1. He honorably served for two years and five months before going absent without leave (AWOL) from 12 August 1996 to 6 October 1996. His AWOL status stemmed from a disagreement with his Battalion Commander and concerns about potential repercussions. After consulting the Judge Advocate General's office, he surrendered to authorities and pursued legal actions, which impacted the nature of his discharge.

a. Since his discharge, he has served his community in the medical field, demonstrating commitment to military traditions. Supporting statements from CMSgt T. L., Augusta University's P. C., Midland Valley Recreation Association's R. S., and Aiken County's C. D. and B. W. highlight his contributions.

b. He feels his discharge was inequitable, and the narrative description, character service and reentry code on the discharge document are unjust. As delegated by the Secretary of the Army, the Army Board of Corrections may correct a military record when necessary to correct any error or to remove an injustice. He requests the narrative reason for separation be changed to neutral language, an upgrade of his character of service to "General," and corresponding changes to his Separation Code and re-entry code.

3. The applicant provides five-character letters unanimously endorsing the applicant's request for an upgrade in discharge status due to inequity. The letters describe applicant as a dedicated, hardworking individual who transitioned from military service into a prominent career in the EMS field. The applicant's colleagues and friends note the applicant's professionalism, commitment to saving lives, and leadership skills, often citing the applicant's role as a mentor to younger employees. The applicant's involvement extends beyond the applicant's career; he is active in his community, volunteering in youth sports and charitable events, and maintaining strong, supportive relationships with his family and friends. Each writer expresses high regard for J.L.B.'s moral character, trustworthiness, and unwavering commitment to those around him, both personally and professionally.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 8 March 1994.

b. The service record includes a Memorandum for Commander. The applicant declared that he was advised by defense counsel that at the time the government did not receive the necessary documents or records with which to obtain a conviction by a court martial. This is not due to any fault of the government but merely to the time required to request and mail the documents and records. The applicant was advised by military council that the applicant cannot completely advise the applicant without the records. The applicant knowingly, willingly, and voluntarily declared that he was absent without leave (AWOL) from the United States Army from on or about 12 August 1996 to on or about 7 October 1996. The applicant understood that making this admission he realized he may be given an under other than honorable conditions discharge.

c. On 10 October 1996, the applicant consulted with legal counsel and requested a discharge in lieu of trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separation – Enlisted Personnel), Chapter 10. He acknowledged:

- he was making the request of his own free will
- maximum punishment
- he was guilty of at least one or more 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 under other conditions other than honorable
- 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 must apply to the Army Discharge Review Board or the Army Board for the Correction of Military Records for a review of discharge, but there was no automatic upgrading
- he may expect to encounter substantial prejudice in civilian life

d. A DD Form 458 (Charge Sheet) dated 10 October 1996, shows on or about 12 August 1996 the applicant went AWOL and remained AWOL until on or about 7 October 1996.

e. On 19 December 1996, the immediate commander recommended approval from the applicant's request for discharge in lieu of trial by court-martial. He recommended the applicant to be issued an under other than honorable conditions discharge.

f. On 3 January 1997, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He would be issued an under other than honorable conditions discharge. The applicant will be reduced to the lowest grade private (E-1).

g. Orders 27-10, dated 27 January 1997, reduced the applicant to private (E-1) with an effective date of 3 January 1997.

h. Orders 057-0159, dated 26 February 1997, discharged the applicant from active duty with an effective date of 5 March 1997.

i. On 5 March 1997, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 year 10 months, and 2 days of active service with 54 days of lost time. He was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial," with reentry code 3. It also shows he was awarded or authorized:

- National Defense Service Medal
- Army Service Ribbon
- Marksman Marksmanship Qualification Badge Rifle (M16)
- Marksman Marksmanship Qualification Badge with Hand Grenade
- Parachutist Badge

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

6. By regulation (AR 601-210), RE codes are used for administrative purposes only and are not to be considered derogatory in nature. They are codes used for identification of an enlistment processing procedure. Table 3-1 lists the following:

a. RE-1 applies to persons immediately eligible for reenlistment at time of separation.

b. RE-3 applies to persons who may be eligible with waiver-check reason for separation.

c. RE-4 applies to persons ineligible for enlistment.

7. By regulation (AR 635-5), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

8. By regulation (AR 635-200), an individual who has 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. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

9. In reaching its determination, the Board can consider the applicant's 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, the evidence found within the military record and published DoD guidance for consideration of discharge upgrade requests, the Board found that partial relief was warranted.

2. The Board carefully considered the applicant's statement, his length and record of service, the frequency and nature of his misconduct, his request for separation in lieu of court martial and the reason and character of service when discharged. The Board considered the applicant's post-service achievements and letters of recommendation and determined that they were sufficient for the Board to recommend a partial upgrade to his character of service to General, Under Honorable Conditions as a matter of clemency. The Board did not find the evidence sufficient to change the reason for separation or the applicant's reentry code.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial 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 5 March 1997, to show in item 24 (character of service): Under honorable conditions (General).

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to changing his separation and reentry codes.



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) 601-210 (Regular Army and Army Reserve Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the RA and the United States Army Reserve. Table 3-1 included a list of the RA RE codes. RE codes are numbered 1, 3, and 4.

- RE-1 applies to Soldiers completing their term of active service who are considered qualified to reenter the U.S. Army; they are qualified for enlistment if all other criteria are met
- RE-3 applies to Soldiers who are not considered fully qualified for reentry or continuous service at the time of separation, but the disqualification is waivable; those individuals are ineligible unless a waiver is granted

- RE-4 applies to Soldiers ineligible for reentry

3. Army Regulation 635-5 (Separation Documents, in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) states SPD codes are three-character alphabetic combinations which identify reasons for and types of separation from active service. The SPD code of "KFS" was the correct code for Soldiers separating under chapter 10 for In lieu of trial by court-martial.

5. Army Regulation 635-200 (Personnel Separation – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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. Paragraph 3-7b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

6. 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/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 based on 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.

7. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//