

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 December 2024

DOCKET NUMBER: AR20240003776

APPLICANT REQUESTS: an upgrade of his characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Statement
- Arrest/Booking Report, 28 May 1993
- Memorandum, subject: Discharge Upgrade for B_A_H_, 18 February 2024
- Letter of Support from Y_O_, undated

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, in effect:

a. He was incarcerated in his hometown and held for 32 days on a warrant from Louisiana, while home on a weekend pass. He told the officers that he was active military and they needed to contact his commanding officer to let them know what was going on, but they ignored it. When he got discharged, he fell into a depression thinking his life was over. He is the oldest male child in his family, and he wanted to set examples and goals for his younger siblings. He felt like a failure, and he did not know that there was anything he could do.

b. He was home in Moultrie, GA on a weekend pass, and his friend had a small firearm that he let the applicant use for protection. When he left to head back to the base, he got pulled over in Louisiana for speeding and he explained to the officer that he was heading back to base. The officer said that he would let him off on a warning if everything checked out. After the officer ran his identification, he asked him if he had anything in the car. He told him that he had a small firearm in the glove compartment

that he had gotten from a friend for protection. The officer ran the number on the gun, and it came back as stolen. The officer charged him with possession of stolen property. The officer called the judge to see if the judge could release him to go on base. The judge agreed, so he was released. By the time the court date came up he had forgotten all about it and missed court.

c. A month later he went back home and was pulled over for the warrant and taken to jail. He explained to the officers that he was active military and to contact his commanding officer. They kept saying they would take care of it, but they never did. He was locked up for over 30 days before the military police came and got him. That was the reason for his AWOL.

3. The applicant provides:

a. An Arrest/Booking Report, which shows he was charged with possession of stolen property and criminal trespassing. On 28 May 1993 he was arrested and charged as a deserter – U.S. Army and released to Fort Benning Military Police.

b. A memorandum from Captain R_, U.S. Army Chaplain Clinician, dated 18 February 2024, which states he counseled the applicant in the areas of shame and guilt both professionally and personally surrounding his discharge. The chaplain states the applicant responded favorably to his advice and is now taking charge to regain his reputation by requesting a discharge upgrade. The applicant has not had any other problems with the law and has been a model citizen since being discharged. He is a dedicated father who raised his children to be productive citizens and they have received scholarships to notable schools.

c. A letter of support from Ms. Y_ O_, a friend of the applicant for the past 10 years who states the applicant is a great person.

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

a. The applicant enlisted in the Regular Army on 28 November 1988. The highest grade he held was private first class (PFC/E-3).

b. The applicant's duty status changed on the following dates:

- Ordinary Leave (OLV) to Absent Without Leave (AWOL) – 13 September 1990
- AWOL to Civilian Confinement – 2 October 1990
- Civilian Confinement to AWOL – 19 March 1991
- AWOL to Present for Duty (PDY) – 2 April 1991
- PDY to AWOL – 13 December 1991

- AWOL to PDY – 23 December 1991
- PDY to AWOL – 25 December 1991
- AWOL to Dropped from Rolls (DFR) – 25 January 1992
- DFR to Attached/PDY – 28 May 1993 (apprehended by civilian authorities and returned to military control)

c. On an unspecified date, after the applicant's defense counsel advised and 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, he knowingly, willingly, and voluntarily declared that he was AWOL from the U.S. Army from 25 December 1991 to 28 May 1993.

d. On 15 June 1993, the immediate commander forwarded court-martial charges against the applicant and recommended he be tried by special court-martial empowered to adjudge a bad conduct discharge.

e. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge.

f. A memorandum shows the applicant was given an out-processing briefing concerning eligibility for types and benefits of discharges, in the event his discharge was approved.

g. A DA Form 31 (Request and Authority for Leave), dated 15 June 1993, shows the applicant was placed on excess leave indefinitely.

h. The applicant was discharged on 23 August 1993. His DD Form 214 (Certificate of Release and Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, in lieu of court-martial, in the rank grade of private/E-1, and his service was characterized as under other than honorable conditions. He completed 2 years, 8 months, and 24 days of net active service during the covered period. This form also shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Good Conduct Medal, National Defense Service Medal, Army Service Ribbon, and the Overseas Service Ribbon
- Item 26 (Separation Code): KFS
- Item 27 (Reenlistment Code): 3
- Item 29 (Dates of Time Lost During This Period): 13 September 1990 – 1 April 1991; 13 December 1991 – 22 December 1991; 25 December 1991 – 25 June 1992; 26 June 1992 – 27 May 1993

5. 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.
6. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial. An under other than honorable conditions character of service is normally considered appropriate.
7. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

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 pattern of misconduct leading to the applicant's separation and the lack of any 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|---|---|---|----------------------|
| : | : | : | 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.

[REDACTED]

[REDACTED]

[REDACTED]

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 request for discharge may be submitted at any time 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 is given reasonable time to consult with a 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 separation authority was

authorized to direct a general discharge certificate if such was merited by the member's overall record during their current enlistment. For members who had completed entry level status, characterization of service as honorable was not authorized unless the member's record was otherwise so meritorious that any other characterization clearly would be improper.

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. The recipient of a general discharge is normally a member whose military record and performance is satisfactory.

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. 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 for the Good of the Service in lieu of court-martial would receive a separation code of "KFS."

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

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. 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//