

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 December 2024

DOCKET NUMBER: AR20240004073

APPLICANT REQUESTS: an upgrade of his character of service.

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

- DD Form 149 (Application for Correction of Military Record), 12 February 2024
- self-authored statement
- Honor Graduate Letter, 5 September 1985
- DA Form 31 (Request and Authority for Leave), 3 June 1986 to 22 June 1986
- Emergency Leave letter
- Orders 128-2, Emergency Leave, 3 June 1986
- six certificates

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, he is requesting a discharge upgrade to obtain benefits. While serving he was sent home for the birth of his son and his wife had several complications that put her in a life threatening situation. She was in the hospital a week after his son was born, when released she required additional time for recovery. He called his Commanding Officer [REDACTED] where he requested extended leave, additional time was denied, he requested to be transferred to an installation closer to his home, it also was denied. He did not have anyone else to care for his spouse. He loved the Army, he graduated his military occupational specialty class with honors, he planned to make the Army a career. He believes his commanding officer robbed him of his military career and hopes the Board can agree to an upgrade of his discharge and lift the burden off of him.

3. The applicant enlisted in the Regular Army on 26 March 1985, for a 4-year period. He was awarded the military occupational specialty of 63B (Light Wheel Vehicle Mechanic). The highest rank he attained was private first class/E-3.

4. A DA Form 31 (Request and Authority for Leave) shows the applicant was approved for emergency leave on 3 June 1986 to 22 June 1986, with a departure change of 4 June 1986 due to the applicant not being able to obtain a flight.

5. The applicant's duty status changed from on leave to absent without leave (AWOL) and from AWOL to dropped from rolls. A DA Form 4187 (Personnel Action) shows his status was updated from dropped from rolls to returned to military control effective 21 December 1990, where he was apprehended by civilian authorities.

6. On 30 July 1986, court-martial charges were preferred against the applicant, for violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL from on or about 24 June 1986 and remaining AWOL until on or about 21 December 1990, when he was apprehended.

7. The applicant consulted with legal counsel on 3 January 1991, and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he understood he may encounter substantial prejudice in civilian life and submitted a statement in his own behalf, wherein he stated:

(1) He was granted emergency leave due to his wife's complications during her pregnancy. He states he contacted his commanding officer, Captain [REDACTED] and requested an extension for additional leave, to which was denied.

(2) He states, once the extension was denied, he requested a passionate reassignment to Fort Ord, due to his wife's medical complications, to which was denied.

He called the installation, Fort Ord, and requested help and due to his commanding officer's denial, the installation could not assist him.

(3) He states he tried his best to work out a solution with the Army and was unable to receive any cooperation. He felt he had no other option but to go AWOL to be with his spouse.

8. The separation authority approved the applicant's request for discharge in lieu of court-martial on 3 April 1991, and further directed the applicant receive a under other than honorable conditions (UOTHC) discharge, and that he be reduced to the lowest enlisted grade of E-1.

9. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 7 May 1991, under the provisions of AR 635-200, Chapter 10, for the good of the service – in lieu of court-martial, in the grade of E-1. He received an UOTHC characterization of service, with separation code KFS, and reentry code RE-3. He was credited with 1 year, 8 months and 14 days of net active service and time lost from 24 June 1986 to 20 December 1990. He was awarded or authorized the Army Service Ribbon and the Marksman Badge with Rifle Bar.

10. The applicant additionally provides six certificates varying from graduation of basic training, graduation of his military occupational specialty course while being the honor graduate, certificate of achievement as the honor graduate, certificate of completion, and qualification of certificate to include his government motor vehicle operator's identification card. He submits his honor graduate letter, and orders showing he was authorized emergency leave due to his wife's medical condition of pre-eclampsia.

11. Discharges under the provisions of AR 635-200, Chapter 10 are voluntary requests 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.

12. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The evidence of record shows the applicant was charged with commission of an offense (AWOL from 24 June 1986 to 21 December 1990) punishable under the UCMJ with a

punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in the applicant's available separation processing. Also, although the applicant provides several certificates in support of a clemency determination, the Board found such certificates insufficient and do not outweigh the misconduct for which he was discharged. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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.

12/20/2024

X

CHAIRPERSON

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, provided guidance for the administrative separation of enlisted personnel:

a. Chapter 10 of this regulation provided a member who has committed an offense or offenses, the punishment for which, under the Uniform Code Military Justice and the Manual for Courts-Martial, 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, or, until final action on the case by the court-martial convening authority. A member who is under a suspended sentence of a punitive discharge may also submit a request for discharge for the good of the Service. An under other than honorable conditions discharge certificate normally is appropriate for a member who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.

b. An honorable discharge is a separation with honor. The 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. An under honorable conditions (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.

3. 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/NR) 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 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.

//NOTHING FOLLOWS//