

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 November 2024

DOCKET NUMBER: AR20240004407

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)
- Applicant Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 11 May 1987

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:

a. If he remained in the Army, he would have received an honorable discharge but due to the actions of his superiors he could have been injured or killed. He loved serving in the U.S. Air Force and planned to make it a career. Unfortunately, about eight years into his service our country went into a budget cut called "Gramm Rudman Act." So many dedicated and professional people in all branches were let go and he was one of them. After about a year in the civilian sector, he tried to go back into the U.S. Air Force but unfortunately it was not meant to be. He found he could serve in the U.S. Army. It was fantastic to be able to serve his country again, and it was great for a while, however, a higher-ranking noncommissioned officer (NCO) had a grudge against him. To this day he does not know why.

b. He ended up having two training accidents that almost resulted in an injury or his death. He found out the NCO was responsible for both incidents. He went to his chain of command, both the first sergeant and battalion commander, and both times he was put up against the wall and told that the sergeant in question was a “highly decorated NCO” and what he said would equate to slander and he would be busted down to private. His daughter was only five years old, and his wife was six months pregnant. He did not want to leave behind a widow and two orphans, so he had to make a decision that literally broke his soul – to leave the Army. He turned in his gear and found a job so he could take care of his family.

c. A few years later he ended up at Fort Knox, KY to be processed out of the military. First, he found out this was a very common occurrence and second and most disturbing is that they would not investigate this in any way. He received an under other than honorable conditions discharge with no explanation of how he could do an investigation to challenge his discharge. He loves his country and even at his age he would serve again. Due to the actions of a few individuals, he feels he was betrayed by the officers he swore to serve and obey. He would be eternally grateful if the Board could help him change his discharge to honorable and help him right a wrong.

3. The applicant provides a copy of his DD Form 214, which shows his honorable service in the U.S. Air Force.

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

a. He served in the U.S. Air Force from 2 March 1984 to 11 May 1987.

b. He enlisted in the Regular Army on 3 February 1988 in the pay grade of E-5. The highest rank he held was sergeant (SGT/E-5).

c. The applicant's record shows the following changes to his duty status:

- Present for Duty (PDY) to Absent without Leave (AWOL) – 6 March 1989
- AWOL to Dropped from Rolls (DFR) – 5 April 1989
- DFR to Attached/PDY – 11 July 1994; applicant was apprehended by civilian authorities and returned to military control.

d. 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 6 March 1989 to 11 July 1994.

e. Court-martial charges were preferred against the applicant on 14 July 1994. His DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 6 March 1989 to on or about 11 July 1994.

f. On 14 July 1994, 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 that 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.

(1) He further acknowledged he understood that if his discharge request was 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

(2) 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 under other than honorable discharge.

(3) He further understood that there was no automatic upgrading or automatic review of his discharge by any Government agency or the ABCMR.

(4) He understood that if he desired a review of his discharge, he must apply to either the Army Discharge Review Board or the ABCMR, and that the act of consideration by either Board did not imply that his discharge would be upgraded.

g. On 20 July 1994, the immediate commander initiated separation action against the applicant and recommended approval of the request for discharge in lieu of trial by court-martial, with characterization of service under other than honorable conditions. The commander noted that the applicant submitted a statement on his own behalf.

h. On the same date, the intermediate commander recommended approval of the discharge with characterization of service under other than honorable conditions.

i. The separation authority approved the recommended discharge on 4 August 1994, directed the applicant be reduced to the lowest enlisted grade, and be issued an under other than honorable conditions discharge.

j. The applicant was discharged on 23 August 1994. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, in the rank/grade of

private/E-1, and his service was characterized as under other than honorable conditions. This form also shows in:

- Item 12c (Net Active Service This Period): “2 months, 16 days”
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized):
 - Air Force Achievement Medal
 - Air Force Good Conduct Medal
 - National Defense Service Medal
 - NCO Professional Development Ribbon (Primary Level)
 - Army Service Ribbon
 - Overseas Service Ribbon
- Item 29 (Dates of Time Lost During This Period): 6 March “1988” [sic] – 10 July 1994

5. The Board should consider the applicant's overall record 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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with an offense punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's length of absence and based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

2. 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 Soldier 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 Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge for the good of the service. The Soldier 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 Soldier may elect to submit a request for discharge for the good of the service. The Soldier 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 Soldier 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 Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

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. 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//