

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 December 2024

DOCKET NUMBER: AR20240004833

APPLICANT REQUESTS:

- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show an unspecified, more favorable reentry eligibility (RE) code
- a personal appearance hearing before the Board via video/telephone

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

DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552).

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 it has been 17 years since he was discharged and he is a different person now. He would like his RE code changed so he can enlist in the Texas Army National Guard.
3. He enlisted in the Regular Army on 25 September 2008.
4. His service records contain three DA Forms 4187 (Personnel Action) showing his duty status was changed as follows:
  - on 29 March 2008 from permissive temporary duty to absent without leave (AWOL)
  - on 28 April 2008 from AWOL to dropped from the unit rolls
  - on 2 June 2008 from dropped from the unit rolls to present for duty – returned to military control (surrendered to military authorities)

5. The DD Form 458 (Charge Sheet), 5 June 2008, shows court-martial charges were preferred against him for being AWOL from his unit from on or about 29 March 2008 until on or about 2 June 2008.

6. On 6 June 2008, he consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a bad conduct or dishonorable discharge, and the procedures and rights available to him.

a. Subsequent to receiving legal counsel, he voluntarily requested discharge for the good of the service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. In his request for discharge, he acknowledged he understood that by requesting discharge, he was admitting guilt to the charge 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 Veterans Administration (now known as the Department of Veterans Affairs), and he could be deprived of his rights and benefits as a veteran under both federal and state laws.

b. He declined to submit a statement in his own behalf.

7. On 11 July 2008, his commander recommended approval of his request for discharge and issuance of a general discharge under honorable conditions. His commander noted that he was AWOL for 65 days and surrendered to military authorities.

8. On 29 July 2008, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial under the provisions of Army Regulation 635-200, chapter 10. He further directed characterization of his service as general under honorable conditions.

9. The applicant was discharged on 22 August 2008. His DD Form 214 confirms he was discharged in lieu of trial by court-martial under the provisions of Army Regulation 635-200, chapter 10. He completed 8 months and 24 days of net active service during this period with lost time due to AWOL from 29 March 2008 through 2 June 2008. His service was characterized as under honorable conditions (general). He was assigned separation code KFS and RE code 4.

10. He petitioned the Army Discharge Review Board on 9 November 2017 for an upgrade of his discharge to honorable. On 9 August 2019, the board determined his discharge was both proper and equitable, and denied his request.

BOARD DISCUSSION:

1. The Board determined 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.
2. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not warranted. The applicant's contentions, his military records, and regulatory guidance were carefully considered.
  - a. A majority of the Board noted that the evidence shows the applicant was discharged under the provisions of chapter 10 of AR 635-200, in lieu of trial by a court-martial. Enlisted Soldiers separated under chapter 10 of AR 635-200 are assigned Separation Code KFS. Such Separation Code has a corresponding RE Code of 4. The Board found no error or injustice, or mitigating factors that would merit a change to the applicant's RE Code.
  - b. The member in the minority determined that an upgrade of the applicant's RE Code to RE-3 is warranted because his period of AWOL is fairly short. Additionally, the member in the minority noted that although the applicant went AWOL, he has shown desire to serve his country again, either as a Reservist or a member of the National Guard, and there is no objection to giving him an opportunity to do so if otherwise qualified.



error or injustice by a preponderance of the evidence. The ABCMR members will direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. The ABCMR may, in its discretion, hold a hearing. 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.

3. Army Regulation 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 terms 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 the time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code 4 applies to Soldiers separated from their last period of service with a nonwaivable disqualification

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. The SPD code KFS is the appropriate code assigned to enlisted Soldiers who are discharged in lieu of trial by court-martial under the provisions of Army Regulation 635-200, chapter 10.

5. The SPD Code/RE Code Cross Reference Table shows that a Soldier assigned an SPD code of KFS will be assigned an RE c-code of 4.

//NOTHING FOLLOWS//