

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 January 2025

DOCKET NUMBER: AR20240004917

APPLICANT REQUESTS: in effect,

- Upgrade of his under other than honorable conditions discharge to honorable or general, under honorable conditions
- Change the narrative reason for separation from in lieu of trial by court-martial to secretarial authority
- Also, a personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel brief (9 pages)
- Power of Attorney
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Self-authored affidavit
- Training Certificates
- Support letter (S.J.)
- (3) DA Form 2823 (Sworn Statement)
- DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ))
- Ch 14 recommendation
- Separation documents
- Resume
- Post service degree and certificates
- Recommendation letter (G.P.)
- Recommendation letter (K.C.)
- Support letter (A.M.) spouse
- FBI criminal results

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 a self-authored affidavit:

a. In 2003, he embarked on his journey with the Army, a young and undisciplined individual. Much of his initial years were spent in basic training and advanced individual training (AIT), where he was striving to adapt to a structured environment. However, a significant turning point occurred when he faced accusations in 2004, alleging his involvement in providing drugs to another Soldier and a civilian. He wants to emphasize that he did not take any drugs, and he remain perplexed as to why the test yielded a positive result. Despite his subsequent negative urinalysis tests, he was given more than most until it finally came positive.

b. Then in 2005, he found himself confronted with an article 15. Additionally, during this time, his unit notified him that he was going to be chaptered, and no one said anything about offering him a separation board. The weight of this situation, coupled with a sense of disillusionment and a belief that everything he had dreamed and worked for was being unjustly taken from him, led him to make the foolish decision to go absent without leave (AWOL) after 9 months in AIT waiting for his day, he was told he could no longer do what he came into the Army to do. He felt that having given the Article 15 was tarnishing his honor. He was told to pick a new military occupational specialty. His state of mind during this period was one of profound conflict, and it ultimately led him to make choices he deeply regrets, which he still feels to this day.

c. As he considered his options on what to do when he went AWOL, he sought guidance from his former Reserve Officer Training Corps commander at Texas A&M. He provided him with invaluable advice, recommending that he complete the process and return to Fort Sill for faster processing. Upon his return, Captain S___, his assigned lawyer, promptly advised him that pursuing a Chapter 10 discharge-in-lieu was the swiftest and painless path to take. Trusting in his counsel, he followed his recommendation and informed him of his decision to proceed with it.

d. He comprehends why the Command suspected his guilt in the drug-related accusations. Why they had him do several urinalyses based on the statements against him. Yet, he knows he is not guilty, maintains his innocence in that regard to this day. Still, it is undeniable that he is accountable for his decision to go AWOL and receive the Chapter 10 discharge. He does not contest his AWOL status, nor does he seek to overturn it or dwell on these past charges that evoke painful memories. His primary purpose now is to rectify his records so that they do not hinder his future prospects, both professionally and personally. Since his experience in the Army, that inside pain

and challenge has made him ambitious to grow and forge his determination to prove to both himself, and to others that he is not the person they once thought he was.

e. Upon his release, he wasted no time in sending out his resume and responding to job listings in the local newspaper. It was during this period that he had his first interview with US Consulting, a consulting firm. During the interview, he candidly shared his Army experience and the circumstances that had led to his departure. To his surprise and relief, they were enthusiastic about bringing him on board. They recognized the valuable skills he had acquired during his time in the Army and viewed his recognitions and awards. They expressed confidence in his ability to learn and excel in the consulting field. They saw the potential for his electrical and technical expertise, honed in the Army, to be a valuable asset when assessing processes in production facilities.

f. Two weeks later, he embarked on his first assignment, taking a flight to New Mexico to work at the Sara Lee Baking Facility. This marked the beginning of his consulting career, and he was eager to embrace the new opportunities and challenges it presented.

g. He had the privilege of working with consulting firms for over 15 years, guiding others to work smarter, not harder. He has been fortunate to coach many individuals on managing workplace anger, resolving conflicts with colleagues, and nurturing the growth of underperforming team members. Along this journey, he has been fortunate to be mentored by some of the most intelligent and patient individuals, a few of whom were kind enough to provide letters of recommendation to support his case. He is genuinely humbled by the positive transformation in his life.

h. The other than honorable discharge has left a profound impact on his core, affecting his sense of honor and identity to this day. While he has managed to demonstrate his character to everyone else over the years, he still struggles to reconcile with the damage it has done to his dignity and soul. He is pursuing every avenue to correct this, striving to reflect the entirety of his 17 years after the journey in the Army and beyond.

i. As he continues to work with various companies, he has noticed a growing emphasis on background checks, especially for those collaborating with the defense department. This is particularly relevant and came up in his work with the Navy Submarine project through Blue Forge Alliance. It has made him come to this now and not later. Their ambitious goal of increasing submarine production from one to three per year is a formidable task. It is possible that he will have a chance to work on classified parts of this project and need security clearance. He hopes that removing the other than honorable discharge will give him a better chance, when that day comes.

j. He firmly believes that his discharge should be more reflective of the person he is today, considering his growth as a whole individual. This change would enable him to continue playing a vital role in revitalizing struggling companies, contributing to the production of the ships upon which the future Navy relies to make a global impact. He takes immense pride and honor in being a part of this effort and is eager to give back in every way he can.

3. His counsel states the applicant requested separation in lieu of court-martial following a period of AWOL and received an other than honorable characterization of service in January 2006. He took full responsibility for his actions and has dedicated the last eighteen (18) years of his life towards bettering himself and becoming a successful member of society. His significant post-service achievements warrant an upgrade of his discharge characterization at this time. This is his first petition to this Board related to this matter, following a submission to the Army Discharge Review Board (ADRB) in 2008 that resulted in a denial of his application.

a. Counsel continues by stating the applicant joined the Army in 2004 with the desire of serving his country honorably. During AIT at Fort Gordon, GA, he was falsely accused of giving drugs to another Soldier and a civilian, was repeatedly subjected to urinalysis, and eventually tested positive despite never ingesting any illegal substance. The following year, after a long delay during which he committed no more misconduct, he received non-judicial punishment (NJP) for the positive urinalysis and was processed for separation. Despite the false accusations and pending separation looming over his head, he continued to show his true potential and dedication to Army core values. As a result of youthful indiscretion and frustration about his separation, he went AWOL. He turned himself into military authorities after realizing the foolishness of his actions. He accepted a chapter 10 discharge the same day that he turned himself into authorities, not wanting to burden his command and in order to ensure he was separated expeditiously.

b. Following his separation from service, he compiled an impressive record of post-service achievements. He has built a successful career as a consultant and shown himself to be a good mentor, friend, family man, and a law-abiding citizen. This honorable Board has previously granted relief under similar circumstances and for applicants who committed far more serious misconduct. Granting relief is consistent with the 2018 guidance issued by USD Wilkie, as well as past decisions of this Board. In consideration of the below discussion, he respectfully asks this honorable Board to grant the relief requested herein.

c. Counsel restates facts from the applicant's affidavit. In counsel's discussion the applicant accepts full responsibility for his misconduct and has spent the past eighteen (18) years atoning for his youthful indiscretions, pursuing a higher education, and ensuring he is a productive member of society. He has not been involved with any law

enforcement agencies since his separating service. The misconduct that formed the basis for his separation, AWOL, ended with his own voluntary surrender and he was not wanted elsewhere while he was away. His separation in lieu of court-martial was a formality to make his separation simple, not a sign that his offense was worthy of court-martial. His record since leaving the Army shows that he is worthy of clemency. Granting the relief requested is consistent with policy guidance and prior decisions of this Board.

d. Counsel continues to discuss the applicant's post-service achievements over the past 18 years in depth. Counsel argues non-binding persuasive authorities related to previous cases listed in the brief. The applicant has long since paid for and abandoned his criminal conduct, and built a life as a law-abiding citizen, deserving of clemency.

e. Counsel concludes by restating the applicant accepted full responsibility for his period of AWOL, as seen by his willingness to accept the other than honorable conditions discharge characterization and avoid the lengthy and resource-expending process of a courts-martial. Following his separation, he has worked tirelessly to better his life, contribute to society in meaningful ways, and ensure that he has a positive impact on all those he interacts with. Granting relief at this time is consistent with the 2018 policy guidance referenced above and past decisions of this honorable Board. For the reasons set forth fully herein, they respectfully ask that this Board grant the relief requested herein.

4. The applicant enlisted in the Regular Army on 4 February 2004.

5. He completed basic combat training and proceeded to AIT. On 28 June 2005, he received NJP under Article 15 of the UCMJ for between 19 August 2004 and 19 September 2004 wrongfully use a controlled substance (Cocaine). He was reduced to E-3.

6. DA Form 4187 (Personnel Action) shows his duty status was changed:

- from present for duty (PDY) to AWOL on 22 July 2005
- from AWOL to dropped from the rolls (DFR) on 21 August 2005
- from DFR to PDY on 3 October 2005 when he returned to military control at Fort Sill, OK

7. DD Form 458 (Charge Sheet) shows court martial charges were preferred on 5 October 2005, for the charge of AWOL and the specification of on or about 22 July 2005, without authority, absent himself from his organization, and did remain so absent until on or about 3 October 2005.

8. On 6 October 2005, the applicant voluntarily requested discharge in lieu of trial by court-martial under Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. He understood that he may request discharge in lieu of trial by courts-martial because of the charge of AWOL from 22 July – 3 October 2005 which had been preferred against him under the UCMJ, authorized the imposition of a bad conduct or dishonorable discharge. He had the opportunity to consult with counsel who has fully advised him of the nature of his rights under the UCMJ, the elements of the offense with which he was charged, any relevant lesser included offense(s) thereto, and the facts that must be established by competent evidence beyond a reasonable doubt to sustain a finding of guilty; the possible defenses which appear to be available at this time; and the maximum permissible punishment if he was found guilty.

a. He understood that, if his request for discharge is accepted, he may be discharged under conditions which are other than honorable and furnished an Under Other than Honorable Discharge Certificate.

b. He had been advised and understood the possible effects of an other than honorable discharge and that as a result of the issuance of such discharge, he will be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered by the Veteran's Administration, and that he may be deprived of his rights and benefits as a veteran under both Federal and State law.

c. He also understood that he may expect to encounter substantial prejudice in civilian life because of an under other than honorable discharge.

9. On 2 November 2005 and 12 January 2006, his chain of command recommended approval with an under other than honorable conditions discharge.

10. On 17 January 2006, the separation authority approved his request and directed an under other than honorable conditions discharge. He also directed the applicant be reduced to pay grade private E-1.

11. Accordingly, he was discharged under other than honorable conditions on 31 January 2006, under the provisions of AR 635-200, chapter 10. His DD Form 214 shows he completed 1 year, 9 months and 16 days net active service this period. His DD Form 214 also shows:

- Item 26 (Separation Code): KFS
- Item 27 (Reentry Code): 4
- Item 28 (Narrative Reason for Separation): In Lieu of Trial by Court-Martial
- Item 29 (Dates of Time Lost During this Period): 20050722 – 20051002 (22 July 2005 – 2 October 2005)

12. The applicant applied to the Army Discharge Review Board (ADRB) (AR20080001455) for an upgrade of his character of service. On 19 November 2008, the ADRB, after careful consideration of his military records and all other available evidence, determined that he was properly and equitably discharged. Accordingly, his request for a change in the type and nature of his discharge was denied.

13. The applicant provides:

a. Power of Attorney allowing his attorney to act on his behalf relating to and/or arising out of his service with the United States Military.

b. Training Certificates for training completed successfully and/or awarded certificate of achievement/appreciation.

c. Support letter (S.J.) who recommended that the command disapprove the chapter separation action. He also spoke highly of the applicant's leadership potential and volunteerism. (The complete letter is available in documents for the Board's review).

d. (3) DA Form 2823 (Sworn Statement) related to cocaine in the barracks. (The three sworn statements are available in documents for the Board's review).

e. Resume showing his professional education, certifications, and work experience.

f. Post service degree and certificates showing his self-improvement after service.

g. Recommendation letter (G.P.) who has had the privilege of knowing the applicant for over a decade and have collaborated with him on various projects across different industries and in different countries. He demonstrated exceptional qualities, innate sense of humility, and eager to assist others. (The complete letter is available in documents for the Board's review).

h. Recommendation letter (K.C.) who has known the applicant since 2008 while working with him as a contractor. From what he understands, the ABCMR evaluates applicants not only based on their past qualifications but also on their dedication and commitment to who they are today. In the case of the applicant, you will find a highly motivated and capable individual who possesses a unique set of skills and experiences. He exemplifies everything that a soldier should be, both during his time in the military and as a contributing member of society today. He believes that granting his request to the ABCMR is not only well-deserved but also in the best interest of the Army. He is a dedicated, disciplined, and effective team player and leader. His qualities and experience make him an asset to any learn, and he has no doubt that he will continue to

excel in the next phase of his career. (The complete letter is available in documents for the Board's review).

i. Support letter (A.M.) spouse states he is very passionate about the things that really matter to him, and integrity, values, honor, and honesty were attributes he was never going to compromise for anyone or anything. (The complete letter is available in documents for the Board's review).

j. FBI criminal results showing all cases related to him as of 8 December 2023.

14. By regulation, AR 15-185 (Army Board for Correction of Military Records (ABCMR)) states ABCMR members will review all applications that are properly before them to determine the existence of an error. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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.

15. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

16. 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 Department of Defense guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, his record of service, the frequency and nature of his misconduct, his request for discharge, the reason for his separation and the character of service he received upon separation. The Board considered the Commander's separation statement, the sworn statements of fellow Soldiers and the FBI report. The Board considered the applicant's statement and the documents he provided reflecting academic and employment related post-service

achievements and reference letters in support of a clemency determination. The Board did not find sufficient evidence of in-service mitigating factors to overcome the serious misconduct. The Board did not find the evidence of post-service behaviors sufficient to render a clemency determination to upgrade the applicant's discharge. Based on a preponderance of evidence, the Board determined that character of service the applicant received upon separation was not in error or unjust.

3. 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.

[REDACTED]

[REDACTED] [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) 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 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. AR 635-200 (Active Duty Enlisted Administrative Separations) provides the basic authority for the separation of enlisted personnel. Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

a. Paragraph 3-7a states an honorable discharge is a separation with honor and 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.

b. Paragraph 3-7b states a general discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7c states under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

d. Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Army policy states that although an honorable or general, under honorable conditions discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

4. AR 601-210 (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waivable and non-waivable separations. Table 3-1, defines reentry eligibility (RE) codes:

a. RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

b. RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

c. RE-4 Applies to: Person separated from last period of service with a non-waivable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years of active Federal service. Eligibility: Ineligible for enlistment.

5. AR 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. It identifies the SPD code of "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial. The SPD Code/RE Code Cross Reference Table shows that a Soldier assigned an SPD Code of "KFS" will be assigned an RE Code of "4." "JFF" will be assigned for Secretarial Authority.

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. 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. 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//