

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 January 2025

DOCKET NUMBER: AR20240005596

APPLICANT REQUESTS:

- an upgrade of his characterization of service from under other than honorable conditions to honorable
- personal appearance before the Board

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Applicant Statement
- Letter from the Department of Veterans Affairs (VA), 19 January 2024

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. While stationed at Fort Benning, GA he was acquainted with private first class (PFC) J_. PFC J_ was permanent party at Fort Benning and employed as a military policeman at the time. He was in training. One month after becoming friends with PFC J_ she came to him in private and in serious panic and disclosed to him that she had been sexually assaulted by her commanding noncommissioned officer (NCO). She did not know what to do as she was told by her NCO that "If she told then something bad would happen to her."

b. The applicant took it upon himself to take PFC J_ off Fort Benning and drive her to her parents' house in Nevada for protection. He and PFC J_ were reported absent without leave (AWOL). They contacted the Judge Advocate General's Corps and were

instructed to return to a base and make a report. He and PFC J_ returned to a base. They were both told by the company commander that they would receive an honorable discharge and reentry code (RE) 1 because of the severity of the crime that she reported and because they voluntarily returned. PFC J_ had no problem reenlisting after this incident and she has since retired honorably. He feels that he did the right thing by protecting one of his fellow Soldiers and should not be punished with this other than honorable discharge.

3. The applicant provides a letter from the VA, dated 19 January 2024, which states for the period of 3 April 1986 to 14 May 1986 an administrative decision is not required as this was an entry level separation listed as uncharacterized, and the VA updated their system to show this period of service under honorable conditions. For the period of 6 September 1988 to 24 February 1989, an administrative decision is not required as this was listed as active duty for training (ADT) and not active duty (AD) and listed as honorable. The VA decided that his military service for the period of 13 May 1993 to 15 December 1993, is dishonorable for VA purposes.

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

a. A DD Form 214, which shows he served in the United States Navy Reserve. His DD Form 214 shows he entered AD on 3 April 1986 and received an uncharacterized, entry level separation on 14 May 1986 for entry level performance/conduct.

b. He enlisted in the Army National Guard of the United States on 26 August 1988. His NGB Form 22 (Report of Separation and Record of Service) shows he was discharged on 1 March 1992 and assigned to the United States Army Reserve (USAR) Control Group for completion of his statutory obligation. He was discharged under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 8-27G, for continuous and willful absence, and his service was characterized as general, under honorable conditions.

c. He was discharged from the USAR on 12 May 1993 for the purpose of enlistment in the Regular Army.

d. He enlisted in the Regular Army on 13 May 1993. The highest grade he held was private first class (PFC/E-3).

e. His duty status changed on the following dates:

- Present for Duty (PDY) to AWOL – 6 July 1993
- AWOL to Dropped from Rolls (DFR) – 5 August 1993
- DFR to Attached/Returned to Military Control – 15 September 1993

f. Court-martial charges were preferred against the applicant on 20 September 1993. His DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 6 July 1993 to on or about 15 September 1993.

g. On 21 September 1993, 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 and acknowledged the following:

(1) He made the request of his own free will and was not coerced by any person.

(2) His understanding that by requesting discharge, he was admitting guilt to the charges against him or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge.

(3) He understood that if his discharge request was approved, he may be discharged under conditions other than honorable and furnished an under other than honorable discharge certificate.

(4) He could be deprived of many, or all Army benefits and he could be ineligible for many, or all benefits administered by the Veteran's Administration.

(5) 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.

(6) He understood that he must apply to the Army Discharge Review Board (ADRB) or the ABCMR if he wished review of his discharge and realized the act of consideration by either Board does not imply that his discharge will be upgraded.

(7) He elected not to submit a statement in his own behalf.

(8) He did not desire a physical evaluation prior to separation.

h. On 3 November 1993, the immediate commander recommended approval of the request for discharge in lieu of trial by court-martial, with characterization of service under other than honorable conditions.

i. The separation authority approved the recommended discharge on 10 November 1993, directed the applicant be issued an under other than honorable conditions discharge, and reduced to the lowest enlisted grade.

j. The applicant was discharged on 15 December 1993. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, in the lowest enlisted grade, and his service was characterized as under other than honorable conditions. He completed 4 months and 23 days of net active service this period and had lost time from 6 July 1993 to 15 September 1993. This form also shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, the Sharpshooter Marksmanship Qualification Badge (M-16), and the Expert Marksmanship Qualification Badge (Hand Grenade)
- Item 26 (Separation Code): KFS
- Item 27 (Reenlistment Code): 3

5. There is no indication the applicant applied to the ADRB for review of his discharge processing within the Board's 15-year statute of limitations.

6. 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, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's request and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of 72 days AWOL. The Board recognized in support of his request for an upgrade, the applicant cited his actions in assisting a fellow Soldier who allegedly experienced military sexual trauma (MST); however, the applicant did not provide any statements from the alleged victim or other corroborating evidence to substantiate this claim.

2. This Board is not an investigative body and acknowledges that the burden of proof rests with the applicant. Despite this, the applicant did not provide supporting documentation, and his service record lacks evidence to substantiate his claims for a discharge upgrade. The did not provide any post-service achievements, character references, or materials to support a clemency determination. The Board recognizes the seriousness of MST and the importance of supporting fellow service members, the absence of verifiable evidence and mitigating factors prevents a finding that the

discharge was unjust or warrants an upgrade. As such, the Board determined that the overall merits of the case do not support relief.

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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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.

X //SIGNED//

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 (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//