

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 December 2024

DOCKET NUMBER: AR20240005769

APPLICANT AND HIS COUNSEL REQUEST: correction of the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) for the service period ending 19 June 1997, as follows:

- upgrade of his under other than honorable conditions discharge
- upgrade the narrative reason
- upgrade separation authority

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's Brief
- Letter of character

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 counsel states the applicant is requesting an upgrade of his discharge to honorable or general, under honorable conditions, and requests changes to his separation authority, code, and narrative reason for separation. He acknowledges that the request is outside the typical deadlines for appeals but seeks a waiver due to a lack of understanding regarding the time limits. The applicant enlisted in the U.S. Army in January 1989 at age 19, eager to serve his country. He was trained as a Fire Support Specialist and served successfully, earning various commendations, and advancing to the rank of Sergeant. During his service, he made efforts to switch his Military Occupational Specialty (MOS) to Pharmacy Technician, based on promises made by his command. However, this switch did not materialize, leading to growing frustration.

a. While stationed at Fort Stewart, the applicant. became increasingly discouraged by the lack of progress with his MOS change request and was also dealing with family pressures. His mother was struggling to care for his siblings and make ends meet, further adding to his stress. Eventually, the applicant. Went absent without leave (AWOL) for approximately five months. He later voluntarily surrendered to military authorities. After his return, he faced charges for going AWOL and was given the option of either facing a federal conviction or accepting a discharge in lieu of court martial. He chose the discharge, unaware of the long-term consequences of an other than honorable discharge. Following his discharge, he pursued a career as a commercial truck driver, a field he has been in since 2002. He has been a productive member of society, as evidenced by a character reference from a friend. He acknowledges the gravity of his actions and expresses regret for his decision to go AWOL. He attributes his poor judgment to his youth, inexperience, and the stress of his home situation.

b. He requests that the Board consider the mitigating factors—his youth, lack of experience, family pressures, and the over 20 years that have passed since his separation—when making their decision. The applicant seeks a discharge upgrade to correct what he views as an injustice, citing his long period of productive civilian life since his discharge.

3. The applicant provides:

a. A letter of character that states [REDACTED] has known the applicant for 10 years and during this time, [REDACTED] and family has grown to appreciate his caring, humor and professionalism as a commercial truck driver and the applicant is someone you can call on in a time of need.

b. A DD Form 214 dated 19 June 1997.

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

a. The record is void of his DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States), His DD Form 214 shows he enlisted in the Regular Army on 18 January 1989.

b. In the service record shows the applicant voluntarily declare that he was AWOL on or about 16 October 1996 to on or about 18 March 1997.

c. A DD Form 458 (Charge Sheet) shows charges were preferred on the applicant on 20 March 1997 for on or about 16 October 1996 the applicant went AWOL until on or about 18 March 1997.

d. On 20 March 1997, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration
- he may be deprived of his rights and benefits as a veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life
- he may apply to the Army Discharge Review Board or the ABCMR for review of his discharge

e. On 21 March 1997, the separation authority approved the applicant's request for discharge for the good of the service under the provision of AR 635-200, Chapter 10. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted grade.

f. On 11 June 1997, orders 162-1 shows the applicant was reduced to private (E-1) on 21 May 1997.

g. On 18 June 1997, order number 169-0156 shows the applicant will be discharged on 19 June 1997.

h. On 19 June 1997, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 7 years, 11 months, and 29 days of active service, with 151 days lost time. He was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Court Martial," with reentry codes 3. It also shows he was awarded or authorized:

- Army Achievement Medal with 2 oak leaf cluster
- Army Good Conduct Medal
- National Defense Service Medal
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)

- Sharpshooter Marksmanship Qualification Badge with Hand Grenade Bar
- Air Assault Badge
- Driver and Mechanic Badge with Driver Wheel Bar

5. A review of the applicant's record confirms an administrative entry was omitted from his DD Form 214. The entry will be added to his DD Form 214 as an administrative correction and will not be considered by the Board.

6. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

7. By regulation (AR 635-200), a member who has committed an offense or offenses, the punishment for which, under the UCMJ, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other Than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the Service.

8. By regulation (AR 635-5), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

9. By regulation (AR 635-5-1), provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 28 of the DD Form 214 exactly as listed in the regulation. SPD code KFS is listed with the narrative reason as, "For the Good of the Service – In Lieu of Court Martial" in accordance with AR 635-200, Chapter 10.

10. 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:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the lengthy period of honorable service completed prior to a single incident of AWOL leading to the applicant's separation and the guidance on liberal consideration, the Board concluded there was sufficient evidence to grant clemency by upgrading the applicant's characterization of service to General. No other relief was deemed warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to all other requested relief.

3. Prior to closing the case, the Board noted the administrative note below from the analyst of record and recommended that change also be completed to more accurately reflect the military service of the applicant.

3/17/2025

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows his DD Form 214 omitted administrative entries in the Remarks block. As a result, amend the DD Form 214 by adding in item 18 the entry "Continuous Honorable Active Service from 198901 - 19940330."

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, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the member'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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

3. Army Regulation 635-5 (Separation Processing and Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. The information entered thereon reflects the conditions as they existed at the time of separation.

a. For Block 18 (Remarks) to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment).

b. For Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) states separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 28 of the DD Form 214 exactly as listed in the regulation. SPD code KFS is listed with the narrative reason as, "In Lieu of Court Martial" in accordance with AR 635-200, Chapter 10.

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 (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.

a. 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.

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. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory

opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//