

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 January 2025

DOCKET NUMBER: AR20240005797

APPLICANT REQUESTS: correction of his DD Form 214, Certificate of Release or Discharge from Active Duty, to show:

- he was discharged due to a disability
- he received an honorable characterization of service

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

DD Form 149, Application for Correction of Military Record

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, his tinnitus was incurred while on active duty. He needs the characterization of his service upgraded in order to receive health care benefits from the Department of Veterans Affairs.
3. The record shows the applicant enlisted in the Regular Army on 24 July 1984. The highest grade he attained was specialist four/E-4. He completed foreign service in Germany from 8 December 1984 to 7 June 1986.
4. His DA Form 2-1, Personnel Qualification Record, shows the applicant was in an absent without leave (AWOL) status on three separate occasions from his Fort Bragg, North Carolina unit for a total of 147 days.
5. On 15 June 1987 the applicant indicated that he did not desire a separation medical examination.

6. The record contains a memorandum, 16 June 1987, wherein the applicant knowingly, willingly, and voluntarily declared that he was absent without leave (AWOL) from:

- 19 August 1986 to 20 August 1986
- 5 December 1986 to 8 December 1986
- 20 January 1987 to 12 June 1987

7. On 16 June 1987, the applicant was formally charged with being AWOL for the three periods listed above.

8. The record is void of a separation packet; however, his DD Form 214 shows he was discharged on 7 August 1987 under the provisions of Army Regulation (AR) 635-200, Personnel Separations-Enlisted Personnel, chapter 10, for the good of the service. His service was characterized as under other than honorable conditions. He completed 2 years, 7 months, and 18 days of net active service for the period.

9. By regulation:

a. Discharges executed under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge in lieu of trial by court-martial.

b. An enlisted member may not be referred for physical disability processing when action has been started that may result in his administrative separation with an Under Other than Honorable Conditions characterization of service.

c. A case file may be referred to the commander exercising general court-martial jurisdiction, if the general court-martial authority finds that the disability is the cause, or substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.

10. The Board should consider the applicant's statement in accordance with the published equity, injustice, or clemency determination guidance.

11. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records

Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 7 August 1987 discharge characterized as under other than honorable conditions, and, in essence, a referral to the Disability Evaluation System for tinnitus. He states: "Request honorable discharge so that I may get VA health care."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of service under consideration shows he entered the regular Army on 24 July 1984 and was discharged under other than honorable conditions on 7 August 1987 under the separation authority provided by chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel (15 September 1986): Discharge for the Good of the Service. It does not contain a period of service in a hazardous duty pay area.

d. A 16 June 1987 Charge Sheet (DA Form 458) shows he was charged with three periods of absence without leave: 19-20 August 1986, 5 -8 December 1986, and 20 January 1987 thru 12 June 1987.

e. On 16 June 1987, the applicant voluntarily requested discharge for the good of the service under chapter 10 of AR 635-200.

f. On 15 June 1987, he had declined a separation medical examination.

g. No medical documentation was submitted with the application and his period of service predates the EMR.

h. There is no evidence the applicant had any medical condition prior to his discharge which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness. Thus, there is no cause for referral to the Disability Evaluation System.

i. JLV shows he is not registered with the VA.

j. It is the opinion of the ARBA medical advisor that a neither a discharge upgrade based on a medical condition nor a referral to the DES is warranted.

k. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

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 pattern of misconduct leading to the applicant's separation and the following finding outlined in the medical review:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service and/or narrative reason for separation.

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.

//SIGNED//
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.

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 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, establishes the Army Physical Disability Evaluation System. It states:
 - a. The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, grade, rank, or rating, given due consideration to his or her availability for worldwide deployment under field conditions.
 - b. An enlisted member may not be referred for physical disability processing when action has been started that may result in his administrative separation with an Under Other than Honorable Conditions characterization of service.
 - c. A case file may be referred to the commander exercising general court-martial jurisdiction, if the general court-martial authority finds that (1) The disability is the cause, or substantial contributing cause, of the misconduct that might result in a discharge

under other than honorable conditions. (2) Other circumstances warrant disability processing instead of other administrative disposition.

3. AR 635-200, Personnel Separations-Enlisted Personnel, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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 Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. 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.

4. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, 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 grounds.

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 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.

5. Title 10, U.S. Code, section 1556, 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.

6. AR 15-185, Boards, Commissions, and Committees-ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR will decide cases on the evidence of record. It is not an investigative body.

//NOTHING FOLLOWS//