

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2025

DOCKET NUMBER: AR20240006040

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- Three character letters, 20 February 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 he went home on leave and his family member was sick with cancer. He requested an extension of his leave and was told "we know where you are." He had excess leave and did not understand that he was going to be considered absent without leave (AWOL). He was arrested at home and sent back to base where he was demoted and discharged.
3. He provides three character letters from his coworkers and neighbor, wherein they state, in effect, the applicant is a hard worker and he does anything he can to help everyone he works with. He has a great attitude and gets along with and works well with anyone that he is paired up with. He is very committed to his family and a dependable person. He is a selfless and hardworking individual who volunteers to help his community. He is a model citizen, neighbor, and veteran.
4. A review of his record shows:
 - a. He enlisted in the Regular Army on 19 January 1976 and subsequently reenlisted on 31 October 1978.

b. Three DA Forms 4187 (Personnel Action), show his duty status changed on the following dates:

- Present for Duty (PDY) to AWOL – 20 September 1979
- AWOL to Dropped from Rolls (DFR) – 19 October 1979
- DFR to PDY – 15 March 1980

c. The DA Form 458 (Charge Sheet), 26 March 1980, shows he was charged with one specification of being AWOL from on or about 20 September 1979 to on or about 15 March 1980.

d. On 27 March 1980, the applicant submitted request for voluntary discharge for the good of the service, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel). He acknowledged he made the request of his own free will and was not coerced by any person. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to at least one of the charges 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 Veteran's Administration, 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. He elected to submit a statement in his own behalf (his statement is no available for the Board to review.)

e. On 8 April 1980, the applicant's company level and brigade level commanders recommended approval of the applicant's request for discharge. His company level commander noted the applicant's conduct has rendered him triable by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge. Based on his previous record, punishment can be expected to have minimal rehabilitative effect.

f. On 11 April 1980, the separation authority approved the applicant's request for discharge, under the provisions of AR 635-200, for the good of the service. He directed the applicant be issued an under other than honorable conditions characterization of service and he be reduced to the lowest enlisted grade.

g. The applicant was discharged on 5 May 1980. His DD Form 214 (Certificate of Release of Discharge From Active Duty) shows he was discharged under the provisions of AR 635-200, chapter 10, by reason of administrative discharge – conduct triable by court-martial, in the rank/grade of private/E-1, and his service was characterized as under other than honorable conditions. He completed 1 year, 6 months, and 10 days of

net active service during this period with lost time from 20 September 1979 to 14 March 1980. He was assigned the separation code of JFS and the RE code of 3 and 3b.

h. On 26 November 1981, the Army Discharge Review Board notified the applicant that his request for a change in the type of nature of his discharge had been denied.

5. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

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, 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 military record, the frequency and nature of his misconduct, his arrest and return to military control, the charges pending against him, his voluntary request for discharge in lieu of court-martial, the reason for his separation and the character of service he received upon separation. The Board considered the character references provided by the applicant but found he did not submit evidence of post-service accomplishments. Based on a preponderance of evidence the Board determined that the character of service he received was not in error or unjust and that based on the nature of the charges, the letters he provided were insufficient to warrant an upgrade as a matter of clemency.

BOARD VOTE:

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

e. When a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade.

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 "JFS."

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
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted.
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

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.

//NOTHING FOLLOWS//