

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240006174

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under other than honorable conditions discharge to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AC95-07744 on 6 March 1996.
2. The applicant states he was told that he should take his rifle to his head and shoot himself because he was just a street punk from St. Louis and then told just pack up and leave. He was lied to about job and was verbally harassed.
3. The applicant enlisted in the Regular Army on 8 November 1988. He held military occupational specialty 11B (Infantryman).
4. DA Form 4187 (Personnel Action) shows he received an article 15 reducing him in grade to private/E-1 effective 7 June 1989. Reason is void of his records.
5. DA Form 2-1 (Personnel Qualification Record – Part II) shows in item 21 (Time Lost) he was absent without leave (AWOL) from 15 August 1989 – 17 February 1992.
6. DA Form 4187 shows his duty status was changed from dropped from the rolls to attached/present for duty effective 18 February 1992. He was apprehended by civilian authorities in Centreville, IL and returned to military control.
7. On 20 February 1992, he did not desire a separation medical examination.

8. DD Form 458 (Charge Sheet) shows court-martial charges were preferred on 26 February 1992, for the charge of being AWOL from 15 August 1989 – 18 February 1992.

9. On 26 February 1992, he was afforded the opportunity to consult with appointed counsel. He voluntarily requested discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. He understood that he may request discharge for the good of the service because of the following charges which have been preferred against him under the Uniform Code of Military Justice, which authorize the imposition of a bad-conduct discharge for being AWOL from 15 August 1989 – 18 February 1992. He acknowledged that he understood the elements of the offenses charged and was guilty of an offense against him which authorizes the imposition of a bad-conduct or dishonorable discharge.

- He understood he may be discharged under other than honorable conditions and furnished an Other Than Honorable Discharge Certificate
- He understood the possible effects of an other than honorable conditions discharge and as a result 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
- He also understood that he may expect to encounter substantial prejudice in civilian life because of an other than honorable discharge

10. His chain of command recommended approval of his request for discharge for the good of the service and that his service be characterized as under other than honorable conditions.

11. On 5 March 1992, the separation authority approved his request for discharge for the good of the service under the provisions of AR 635-200, chapter 10. He directed his discharge be characterized as under other than honorable conditions and reduction to private/E-1.

12. Accordingly, on 23 March 1992, he was discharged under other than honorable conditions. His DD Form 214 shows he completed 10 months and 13 days net active service this period. It also shows:

- Item 25 (Separation Authority): AR 635-200, chapter 10
- Item 26 (Separation Code): KFS
- Item 27 (Reentry Code): 3
- Item 28 (Narrative Reason for Separation): For the Good of the Service – In Lieu of Court-Martial

- Item 29 (Date of Time Lost During this Period): 890815 – 920217 (15 August 1989 – 17 February 1992)

13. On 26 May 1995, the applicant applied to the Army Discharge Review Board (ADRB) for an upgrade of his character of service. After considering the evidence, the ADRB denied his request.

14. On 6 March 1996, in ABCMR Docket Number AC95-07744, the Board considered his application but determined the evidence presented does not demonstrate the existence of a probable error or injustice. The Board denied his request.

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, 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 petition and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct. The applicant served for only 10 months and 13 days before entering a prolonged period of unauthorized absence totaling 917 days. He was apprehended by civilian authorities and returned to military control on 18 February 1992.

2. The Board found no evidence of error or injustice in the discharge process. Furthermore, the applicant did not provide any post-service achievements, character references, or documentation to support clemency or demonstrate rehabilitation. The Board agreed the applicant's record reflects a significant and sustained departure from

military standards, and the characterization of service is consistent with the nature and duration of his misconduct. As such, the Board determined that the original discharge remains both proper and equitable and reversal of the previous Board determination is without merit. Therefore, relief is denied.

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 Board found 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 to amend the decision of the ABCMR set forth in Docket Number AC95-07744 on 6 March 1996.

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. Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel) 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.

a. Paragraph 3-7a (1) states 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) states 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. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

2. 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//