

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240006244

APPLICANT REQUESTS: upgrade of his under other than honorable conditions discharge. Also, a personal appearance before the Board via video/telephone.

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 his time at his duty station. He was continuously harassed, belittled, cursed, and physically pushed by his Non-Commissioned Officer in Charge. Whenever he would try to file a report on him it was not handled, or he would find out and would block it. The harassment took a toll on him where he could not sleep would cry at night, to the point he wanted to harm himself.
3. The applicant enlisted in the Regular Army on 23 September 1993. He held military occupational specialty 94B (Food Service Specialist).
4. He received non-judicial punishment under article 15 of the Uniform Code of Military Justice (UCMJ) for:
 - on or about 9 July 1994, without authority, absent himself from his unit, and did remain so absent until 12 July 1994
 - On or about 7 April, 8 April, 4 July, 5 July, 6 July, and 8 July 1994, without authority, fail to go at the time prescribed to his appointed place of duty (work call)
 - The applicant never signed DA Form 2627 (Record of Proceedings Under Article 15, UCMJ)

5. DA Form 4187-E (Personnel Action) shows his duty status was changed from absent without leave (AWOL) to returned to military control after he surrendered to military authorities on 29 November 1994. He was AWOL since 11 August 1994.

6. On 30 November 1994, he signed a declination of separation medical examination.

7. DD Form 458 (Charge Sheet) shows court-martial charges were preferred on 2 December 1994, for:

- On or about 11 August 1994, without authority, absent himself from his unit, and did remain so absent until on or about 29 November 1994
- On or about 9 July 1994, without authority, absent himself from his unit, and did remain so absent until on or about 12 July 1994
- On or about 8 April, 4 July, 5 July, 6 July, 7 July, and 8 July 1994, without authority, fail to go at the time prescribed to his appointed place of duty (work call)

8. After consultation with 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 charge preferred against him under the Uniform Code of Military Justice, which authorizes the imposition of a bad conduct discharge or dishonorable discharge. He also understood:

- He may be discharged under conditions other than honorable conditions and furnished an Under Other Than Honorable Discharge Certificate
- He may be deprived of many or all Army benefits, that 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 because of an under other than honorable conditions discharge
- He did not desire a physical evaluation prior to separation

9. On 18 January 1995, his commander recommended approval under the provisions of AR 635-200, chapter 10 and that he be issued an under other than honorable conditions discharge.

10. On 27 January 1995, the separation authority approved discharge under the provisions of chapter 10, AR 635-200. He directed an under other than honorable conditions discharge be issued and that he be reduced to private/E-1.

11. Accordingly, he was discharged on 21 February 1995, under conditions other than honorable under the provisions of AR 635-200, chapter 10. His DD Form 214 shows he completed 1 year, 1 month, and 11 days net active service this period. It also shows:

- Item 26 (Separation Code): KFS
- Item 27 (Reentry Code): RE-3
- Item 28 (Narrative Reason for Separation): In Lieu of Trial by Court-Martial
- Item 29 (Dates of Time Lost During This Period): 940811 – 941128 (11 August 1994 – 28 November 1994)

12. There is no indication he petitioned the Army Discharge Review Board for a review of his discharge within that Board's 15-year statute of limitations.

13. By regulation, AR 15-185 (ABCMR) 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.

14. 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.

15. In reaching its determination, the Board can consider the applicant's petition and her 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 found insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board acknowledged the applicant's claims that he was subjected to harassment and

mistreatment by his Non-Commissioned Officer in Charge, which he claims contributed to his misconduct and emotional distress.

2. However, the applicant has provided no corroborating evidence to substantiate these claims, nor has he submitted any post-service achievements, character references, or documentation to support clemency or demonstrate rehabilitation. The applicant's record reflects a clear and repeated pattern of misconduct, including multiple instances of unauthorized absence, failure to report to duty, and over one year of AWOL status. These offenses led to court-martial charges and his voluntary request for discharge in lieu of trial under Chapter 10, Army Regulation 635-200. In the absence of compelling evidence of error, injustice, or post-service merit, the Board found the original discharge characterization to be both proper and equitable. Therefore, relief is denied.

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

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.

d. Chapter 10 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 a 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. Army policy states that although an honorable or general, under honorable conditions discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and 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 on the basis of 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//