

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 March 2025

DOCKET NUMBER: AR20240006346

APPLICANT REQUESTS:

- service credit for his time while absent without leave (AWOL)
- an upgrade of his general, under honorable conditions discharge to honorable
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- Character Letter
- Medical Records
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 13 May 2013

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 is requesting removal service credit for his AWOL period in order to have access to Veteran Affairs (VA) loan benefits for his children. At the time he was serving and went AWOL he did not understand the quick downhill spiral he would be facing due to lack of childcare and support.

a. Shortly after his arrival with his unit, 1-61 Cavalry Regiment, 4th Brigade Combat Team, 101st Airborne Division, Fort Campbell, Kentucky, he underwent a divorce from his wife due to her adultery. She returned to her home in Boise, Idaho and he was left as the sole caretaker of their two infant children. He struggled to find consistent childcare due to the financial constraints of being a lower enlisted Soldier holding the rank of private first class (PFC)/E-3. This caused him to be late to formation and assigned duty locations often and receive reprimands. Although his leadership and

chain of command were made aware of the difficulties, he was facing there was no resolution as the Child Development Center was unable to provide financial assistance, and he had no family that could step in to help as his mother was being treated for cancer. He was notified that he would be chaptered out of service for family care plan.

b. In addition, he was constantly scrutinized by fellow Soldiers for his personal situation and received racial slurs and jokes regularly. The combination of his circumstances led to depression. Where he had previously excelled in physical training, his punctuality for being at his assigned place of duty on time, and his ambition for the basketball all-Army team he instead struggled to maintain everyday needs leading to his decision to be AWOL.

c. Since leaving the Army, he has held a well cherished career with a non-profit management company focused on helping the homeless, to include homeless Veterans. He strives to be a model father and citizen and is looking to purchase a home to give his children an established foundation. An upgraded discharge would allow him to continue progressing to the next goal.

3. The applicant provides the following:

a. Character Letter from his mother, C- S-, expressing her account of the difficulties her son, the applicant, was going through while serving on active duty to include her inability to assist due to ongoing treatment for cancer.

b. A medical record shows his mother had an appointment on 27 October 2015 for follow up and was restricted to no lifting, no pushing, no pulling over 10 lbs., and no overhead work for 4 weeks.

4. A review of the applicant's available service record reflects the following:

a. On 8 August 2011, he enlisted in the Regular Army.

b. On 10 October 2012, he accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for violation of Article 86 (Absent without Leave) for two counts of failure to report to his appointed place of duty on or about 5 September 2012 and 6 September 2012. His punishment included 10 days of extra duty.

c. The service record includes the applicant's medical examinations, dated 22 February 2013 for the purpose of separation which indicated he was generally in good health. The applicant was marked qualified for service.

- DD Form 2807-1 (Report of Medical History)

- DD Form 2808 (Report of Medical Examination)

d. On 6 March 2013, the applicant underwent a mental evaluation. The DA Form 3822 (Report of Mental Status Evaluations) shows the applicant had no duty limitations due to behavioral health reasons, met medical retention standards, and was cleared for administrative action.

e. On 21 March 2013, he accepted for two specifications of failure to report to his appointed place of duty between on or about 7 - 8 January 2013 and 10 – 22 January 2013. His punishment included 10 days of extra duty.

f. On 26 April 2013, the applicant's immediate commander notified the applicant of her intent to separate him under the provisions of Chapter 14, Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) for Misconduct - AWOL. The specific reasons for proposed recommendation were for missing movement on 9 January 2013, for being AWOL from 7 – 8 January 2013 and again from 10 – 22 January 2013, and for failure to appear at his appointed place of duty on diverse occasions. He acknowledged receipt of the notification of separation.

g. On 2 May 2013, after consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions discharge is issued to him
- he may apply to the ADRB or the ABCMR for upgrading
- he may be ineligible to apply for enlistment in the U.S. Army for a period of 2 years following discharge
- he elected not to submit matters

h. On 2 May 2013, the immediate commander initiated separation action against the applicant for commission of a serious offense. He recommended that his period of service be characterized as general, under honorable conditions.

i. On 6 May 2013, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation, under the provisions of Chapter 14, AR 635-200, paragraph 14-12c for commission of a serious offense. He would be issued a general, under honorable conditions characterization of service.

j. On 13 May 2013, he was discharged from active duty with general, under honorable conditions characterization of service. His DD Form 214 shows he completed 1 year, 8 months, and 23 days of active service. Block 29 (Dates of Time Lost During

this period) shows 8 January 2013 – 8 January 2013 and 10 January 2013 – 21 January 2013, a total of XX days lost. It also shows he was awarded or authorized:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon

5. On 20 August 2014, the applicant was notified the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

7. 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.

8. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed. Paragraph 14-12c states Soldiers are subject to action per this section for commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

9. In reaching its determination, the Board can consider the applicants 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 noted the applicant's

contentions that his absence was driven by overwhelming personal hardship, including sole custody of two infant children, lack of childcare support, financial strain, and emotional distress stemming from a contentious divorce and racial discrimination.

2. The Board acknowledged the applicant's difficult personal circumstances and post-service contributions, including his work with a nonprofit supporting homeless veterans, these factors do not negate the basis for his separation. The record clearly reflects multiple instances of unauthorized absence, including two separate AWOL periods in January 2013, and repeated failures to report to duty. The Board also reviewed the applicant's medical and mental health evaluations, which found him fit for duty and cleared for administrative action. The applicant's DD Form 214 accurately reflects the time lost due to AWOL and the conditions at the time of separation. By regulation, lost time cannot be credited toward active service, and an upgrade of discharge requires compelling evidence of error or injustice, which is not present in this case. Therefore, the Board denied relief.

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 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. Army Regulation 635-5 (Separation 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. Chapter 2-4h(29), Verify that time lost as indicated by Defense Finance and Accounting Service agencies has been subtracted from Net Active Service This Period (block 12c) if the lost time was not “made good.” If the ETS was adjusted as a result of lost time and the soldier served until ETS, the lost time was “made good.” Lost time under 10 USC 972 is not creditable service for pay, retirement, or veteran’s benefits. However, the Army preserves a record (even after time is made up) to explain which service between date of entry on active duty (block 12a) and separation date (block 12b) is creditable service.

b. Time lost after ETS is non–chargeable time under 10 USC 972, but it must also be reported to ensure it is not counted in computation of total creditable service for benefits. For enlisted soldiers, show inclusive periods of time lost to be made good under 10 USC 972, and periods of non–chargeable time after ETS.

4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) 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.

b. Paragraph 3-7b (General Discharge) 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. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed. Paragraph 14-12c states Soldiers are subject to action per this section for commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

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.

//NOTHING FOLLOWS//