

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 8 January 2025

DOCKET NUMBER: AR20240006366

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

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 he is requesting an honorable discharge. He was married and had a young daughter at the time of his military service, but they did not come to live with him. He never had an opportunity to see his daughter and did not believe the Army was helping him. He elected to leave.
3. A review of the applicant's service record shows:
  - a. The applicant enlisted in the Regular Army on 3 February 1997.
  - b. Five DA Forms 4187-E (Personnel Action) and one DA Form 616 (Report of Return of Absentee) changed the applicant's duty status as follows:
    - 31 March 1998 – present for duty (PDY) to absent without leave (AWOL)
    - 30 April 1998 – AWOL to dropped from roll (DFR)
    - 17 August 1998 – DFR to returned to military control (RMC)/PDY (apprehended by civilian authorities)
    - 26 August 1998 – PDY to AWOL
    - 25 September 1998 – AWOL to DFR
    - 2 December 1999 – DFR to RMC/PDY

c. On 15 December 1999, court-martial charges were preferred against the applicant. The DD Form 458 (Charge Sheet) shows he was charged with two specifications of being AWOL from his unit:

- 31 March 1998 until on or about 17 August 1998
- 26 August 1998 until on or about 8 December 1999

d. On 16 December 1999, after consulting with legal counsel he requested a discharge in lieu of trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions
- he would be deprived of many or all Army benefits, 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
- he must apply to the Army Discharge Review Board or the ABCMR for review of his discharge
- he elected not to submit statements on his own behalf and did not desire a physical evaluation prior to separation

e. On 8 May 2000, consistent with the immediate commander's recommendation, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He would be issued an under other than honorable conditions discharge and reduced to the lowest enlisted grade.

f. On 31 May 2000, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years and 9 days of active service with approximately 469 days of lost time. He was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial," with reentry code 4. It also shows he was awarded or authorized:

- Army Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Hand Grenade Bar
- Marksmanship Marksmanship Qualification Badge with Rifle Bar (M-16)

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.
5. By regulation (AR 635-200), an individual who has 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. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of 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, 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 request and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to support the applicant's contentions for an upgrade to honorable.
2. The Board noted, the applicant's record reflects multiple, extended periods of unauthorized absence totaling approximately 469 days, culminating in a discharge under other than honorable conditions in lieu of trial by court-martial. The Board recognized, the applicant cited personal hardship stemming from family separation—specifically, being unable to live with or see his young daughter, these circumstances, though unfortunate, do not constitute mitigating factors sufficient to outweigh the severity and duration of his misconduct. The applicant voluntarily elected to leave military service without authorization, and his actions directly undermined good order and discipline.
3. Furthermore, the applicant did not provide any post-service achievements, character references, or documentation that would support a clemency determination. In the absence of compelling evidence of rehabilitation or meritorious post-service conduct and given the seriousness of the offenses committed during service, the Board agreed, that the original characterization of service remains appropriate and equitable. 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 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 635-200 (Personnel Separations – Enlisted Personnel), 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 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

3. 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//