

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 January 2025

DOCKET NUMBER: AR20240006383

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

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

- DD Form 293 (Application for the Review of Discharge)
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 9 May 1983
- Two Safe Driver Certificates

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 did not receive an honorable discharge because he went absent without leave (AWOL) to care for his mother, who was sick due to her feet failing. With the support of people in his small [REDACTED], including a lawyer, a judge, and his mother's doctor, he felt like he jumped through all the hoops necessary to prove he needed to be his mother's caretaker after her bilateral foot surgery. Although he intended to make the Army a career when he first enlisted, he was the only one who could be his mother's caretaker since he never knew his father and was an only child. His chain of command did not help him with his request for leave, but he admits even a 30-day leave authorization would not have been enough to care for his mother. After his discharge from the Army, he worked as a CDL truck driver for 26 years with the same employer, hauling everything from dog food and diapers to medical supplies. He drove over two million miles accident-free, never went bankrupt, attended church, and served his community by putting up flags for Fremont's Avenue of Flags.
3. The applicant provides two safe driver's certificates, showing he is a member of the safe drive's club and completed 36 months and over two million miles of accident free and citation-free.

4. A review of the applicant's service record shows:

a. The applicant enlisted in the Regular Army on 27 May 1976.

b. Order Number 108-8, dated 27 May 1976 and Orders 160-38, dated 18 August 1977, show after completing his basic combat and advance individual training he was assigned to Headquarters and Headquarters Detachment, 21st Adjutant General Replacement Battalion, APO, NY in Germany with a no later than report date of 24 September 1977.

c. His record contains the following forms dated 3 September 1977:

1) A DA Form 3739 (Application for Assignment/Deletion/Deferment for Extreme Family Problems) shows the applicant filled out a request for a hardship discharge. As a reason for his request, the applicant cited his mother's continued deteriorating health. He is the only one who could care for her, and that should be good enough to be approved for a hardship discharge. He believed he would be better off with his mother than being any help to the Army due to his constant worrying about his mother's condition.

2) A Fort Sill (FS) Form 1340-R shows the applicant's hardship discharge request was first reported on 1 September 1977 at Fort Sill, OK. It also indicates he reported he had been on ordinary leave since 26 August 1977, and his leave would expire on 24 September 1977. He received instructions from the person filling out the form to return to Fort Sill on 7 September with additional documentation to support his request.

d. Five letters of support, dated 5 September 1977 to 7 September 1977, from a family friend, a physician, county judge, clerk, and attorney supporting him being stationed at Fort Sill, OK, or as close to his mother as possible to take care of her. They all cited his mother not being able to work and her poor health as reasons for their support. His mother's doctors listed the applicant's mother's health issues as rheumatoid arthritis, chronic pelvic inflammatory disease, and labyrinthitis and noted she is gradually getting worse.

e. On 29 September 1982, the applicant was notified of his status as a deserter and his eligibility for a discharge in absentia with an anticipated discharge characterization of under other than honorable conditions.

f. On 14 March 1983, the applicant replied to the discharge notification, stating he tried to get a final decision from someone, but no one seemed to know what to do about his situation. He claimed someone in Germany was going to decide on his situation.

However, he chose to stay with his mother since she needed his help now, not in one or two years.

g. On 9 May 1983:

1) A memorandum for the record (MFR) was transcribed to memorialize the applicant's discharge in absentia due to the expiration of the statute of limitation on prosecution. The MFR shows the applicant departed on 26 August 1977 and was carried in an in-transit status until he was removed from the Joint Uniform Military Pay System (JUMPS) in September 1978. He was never reported AWOL or dropped from his unit rolls (DFR). Based on this information, the Army determined administratively that the applicant had been AWOL since 26 September 1977 from the 21st Adjutant General Replacement Battalion, APO, NY. The Army found he had not been under military control since 26 September 1977 and was eligible to be discharged in absentia.

2) The separation authority approved the applicant's discharge in absentia with an under other than honorable conditions characterization of service and notified him that the statement he submitted did not contain sufficient evidence to warrant the issuance of a different category of discharge.

h. On 9 May 1989, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 1 year, 3 months, and 9 days of active service with 2,044 days of lost time. The applicant was discharged under the provisions of Chapter 14, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel). It also shows he was awarded or authorized:

- Army Service Ribbon
- Expert Marksmanship Qualification Badge with Pistol Bar (9 mm)
- Sharpshooter Marksmanship Qualification Badge with Hand Grenade Bar

5. 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.

6. 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:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and

published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The Board determined the applicant requested a discharge upgrade during his service yet was separated for misconduct and therefore some relief was appropriate. The Board concluded a discharge upgrade to under honorable conditions (General) was warranted.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 9 May 1989 to show his characterization of service as under honorable conditions (General).

5/12/2025

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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. 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. 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.

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//