

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2025

DOCKET NUMBER: AR20240006460

APPLICANT REQUESTS:

- an upgrade of his under other than honorable discharge to an honorable discharge
- promotion to the rank/grade of sergeant/E-5
- a personal appearance hearing before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Self-authored statement, 28 March 2024

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 effect, he recognizes he made a grave mistake by failing to fulfill his duty and obligations to the military. He was young and overwhelmed by fear when faced with the prospect of being stationed in Germany. This clouded his judgement and led to his decision not to report as ordered, thereby going absent without leave (AWOL). He served honorably up to that point and was a promotable specialist at the time, waiting for his cut-off scores for his promotion to sergeant, when he was supposed to conduct a permanent change of station to Germany. In the years since his discharge, he has matured and gained a greater understanding of the importance of honoring his commitments. He is remorseful for any inconvenience or disruption his absence may have caused. It has been 30 years since his AWOL and he requests a correction in his discharge to honorable in order to access the Department of Veterans Affairs benefits that he should be entitled to, including medical care and other entitlements.

3. He enlisted in the Regular Army on 5 October 1984 for a period of 3 years. He was promoted to the rank/grade of specialist four/E-4 effective 1 October 1986. He reenlisted on 15 July 1987.

4. Court-martial charges were preferred against the applicant on 2 February 1990, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows, while assigned to the Fort Sill, OK, Personnel Control Facility, in the grade of E-4, he was charged with one specification of violation of Article 86, in that he did on or about 3 April 1989, without authority, absent himself from his organization to wit: 34th Medical Hospital, located at Augsburg, Germany, and did remain so absent until on or about 31 January 1990.

5. After consulting with legal counsel on 2 February 1990, he voluntarily requested discharge for the good of the service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service in lieu of trial by court-martial.

a. He was making this request of his own free will and has not been subjected to any coercion whatsoever by any person. By submitting this request for discharge, he acknowledges that he understood the elements of the offense charged and is guilty of the charges against him, which authorizes the imposition of a bad conduct or dishonorable discharge. Moreover, he states that under no circumstances does he desire further rehabilitation, for he has no desire to perform further military service.

b. He acknowledged he understood that if his discharge request were approved, he could be discharged under other than honorable conditions and furnished an Undesirable Discharge Certificate. He further acknowledged that as a result of such a discharge, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration (now known as the Department of Veterans Affairs), he could be deprived of his rights and benefits as a veteran under both Federal and State laws, and he could expect to encounter substantial prejudice in civilian life by reason of an undesirable discharge. He elected not to submit a statement in his own behalf. He also noted he did not desire a separation medical examination.

6. On 21 February 1990, the applicant's immediate commander recommended his request for discharge under the provisions of Army Regulation 635-200, Chapter 10, be approved.

7. The approval authority approved his request for discharge on 23 February 1990, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial, and directed that he be reduced to the lowest enlisted grade and that he be issued an Under Other Than Honorable Conditions Discharge.

8. He was discharged on 16 March 1990. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:

- item 4a (Grade, Rate, or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 4 years, 4 months, and 16 days
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 25 (Separation Authority) – Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10
- item 26 (Separation Code) – KFS (for the good of the service in lieu of trial by court-martial)
- item 27 (Reenlistment Code) – RE-3/3B/3-C (ineligible for reenlistment without a waiver)
- item 28 (Narrative Reason for Separation) – For the Good of the Service - in Lieu of Court-Martial
- item 29 (Dates of Time Lost During This Period) – 3 April 1989 – 30 January 1990 (a period of 303 days)

9. A thorough review of his official military personnel file fails to show any documentation or evidence of him being recommended for, his name on a promotion list, or being promoted to the rank/grade of sergeant/E-5 during his period of active duty military service.

10. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

11. The Board should consider the applicant's statement in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the lengthy AWOL offense leading to the applicant's separation and the lack of mitigation and/or post-service character evidence submitted by the applicant, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service and/or to the applicant's rank.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

//SIGNED//
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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 15-185 (Army Board for Correction of Military Records) 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. The applicant has the burden of proving an error or injustice by a preponderance of evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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 600-200 (Enlisted Personnel Management System), prescribed policies, responsibilities, and procedures pertaining to career management of Army enlisted personnel. It states promotion of enlisted personnel to grade E-3 through E-9, appointments, grade reductions, and grade restorations will be announced in routine orders. Orders will be issued by commands for promotion to grades E-5 and E-6 when Headquarters, Department of the Army announces each month the promotion point cutoff scores for each grade.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. The basic authority for the separation of enlisted personnel.

a. Paragraph 3-7(a) stated an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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 3-7(b) stated a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 (Discharge for the Good of the Service) provided that a Soldier who committed an offense or offenses for which the authorized punishment included a

punitive discharge could submit a request for discharge for the good of the service in lieu of trial by court-martial.

(1) Commanders would ensure that an individual would not be coerced into submitting a request for discharge for the good of the service. The member would be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge.

(2) The request could be submitted at any time after charges were preferred and must have included the individual's admission of guilt.

(3) If the member elected to submit a request for discharge for the good of the service after receiving counseling, he would personally sign a written request certifying that he had been counseled, that he understood his rights, that he may receive a discharge under other than honorable conditions, and that he understood the adverse nature of such a discharge and the possible consequences.

(4) A discharge under other than honorable conditions normally were appropriate for a Soldier who was discharged for the good of the service. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

d. Paragraph 14-4 (Authority for Discharge or Retention) stated upon determination that a member is to be separated with a discharge under other than honorable conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority.

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/NR) 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 on the basis of equity, injustice, or clemency grounds, Boards 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//