

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 March 2025

DOCKET NUMBER: AR20240006488

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

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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:
 - a. His prior service is not reflected on his DD Form 214, he was never Regular Army (RA), nor was he ever a private (E-1). Nothing on his DD Form 214 reflects his correct information.
 - b. He would appreciate a review and an upgrade. He believes he should at least have the right to some kind of benefit, as he gave time, blood, sweat and tears. He lost friends from combat and to suicide. If that doesn't take a toll on a person, they have no heart.
3. The applicant provides a copy of his DD Form 214. Although there was mention of the toll it takes on a person due to loss of friends from combat and suicide, the applicant did not submit any medical documents that may possibly support a mental health diagnosis.
4. A review of the applicant's service record shows:

a. He enlisted in the Army Reserve on 3 March 2006. As of note, there is no evidence found in the applicant's service file that would explain the "Army/RA" reflected in item 2 (Department, Component and Branch) of the applicant's DD Form 214.

b. DA Form 4187 (Personnel Action) reflects the applicant's duty status changed from Dropped From Rolls (DFR) to Present for Duty/Returned to Military Control (PDY), with an effective date of 27 September 2006. As of note, the applicant's service record found in Interact Personnel Electronic Records Management System (iPERMS) is void of the DA Forms 4187 that reflects the applicant's changes in duty status.

c. DD Form 616 (Report of Return of Absentee), dated 27 September 2006, reflects the applicant was apprehended by civil authorities and returned to military control on 27 September 2006.

d. Automated DD Form 458 (Charge Sheet), dated 13 October 2006, court-martial charges were preferred against the applicant for one specifications of Violation of Article 86 (Absence Without Leave), for on or about 17 July 2006, without authority, absent himself from his organization, and did remain so absent until on or about 27 September 2006.

e. On 16 October 2006, the applicant consulted with legal counsel. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice (UCMJ), the possible effects of an under other than honorable conditions discharge, and the procedures and rights that were available to him. Subsequent to receiving legal counsel, he voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10, in lieu of trial by court-martial. In his request for discharge, he initialed each paragraph acknowledging that he understood that:

- by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of an undesirable discharge
- he acknowledged he understood that if his discharge request was approved he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws
- he was advised he could submit any statements he desired in his own behalf; he elected not to submit any statements in his own behalf

f. It is unclear as to the exact date the separation authority approved the applicant's request for discharge, under the provisions of AR 635-200, chapter 10, in lieu of trial by court-martial, and directed that he be discharged under other than honorable conditions.

g. DD Form 214, which reflects the applicant was discharged on 5 March 2007, under the provisions of AR 635-200 (Active Duty Enlisted Administrative Separations), chapter 10, in lieu of trial by court-martial, with the character of service of under other than honorable conditions. He completed 9 months and 3 days of net active service this period and had 19 days of total prior active service. He had lost time from 17 July 2006 until 27 September 2006. It also shows the following:

- Items 4a (Grade, Rate or rank) and 4b (Pay Grade) show PV1/E-1
- Item 12h (Effective Date of Pay Grade) – 3 March 2006
- Item 26 (Separation Code) - KFS
- Item 27 (Reentry Code) - 4
- Item 28 (Narrative Reason for Separation) - In Lieu of Trial by Court-Martial

5. AR 15-185 (Army Board for Correction of Military Records) states, 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.

6. The applicant applied to the ADRB for an upgrade of his discharge and on 11 July 2008, the ADRB determined the discharge was both proper and equitable and voted to deny relief.

7. Army Regulation 635-200 states, a member who has committed an offense for which the authorized punishment includes a punitive discharge may submit a request for discharge 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.

8. 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:

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 short term of honorable service completed prior to the lengthy AWOL offense, which only ended as a result of apprehension, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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:

1. 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.
2. Prior to closing the case, the Board noted the administrative note below from the analyst of record and recommended that change be completed to more accurately reflect the military service of the applicant.

//SIGNED//

X

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending on 30 June 2020, should be amended as follows:

- Item 2 (Department, Component and Branch): (remove) Army/RA
(add) Army/USAR

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 (Active Duty Enlisted Administrative Separations), sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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 3-7b provides that 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 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.

3. 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.

4. 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. 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. 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//