

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 February 2025

DOCKET NUMBER: AR20240006520

APPLICANT REQUESTS to appear before the Board, as well as an upgrade to his DD Form 214 (Certificate of Release or Discharge from Active Duty) as follows:

- Item 24 (Character of Service) to reflect “honorable”
- Item 26 (Separation Code)
- Item 27 (Reentry Code)
- Item 28 (Narrative Reason for Separation)

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Enlisted Record Brief (ERB)
- Army Commendation Medal (ARCOM) certificate

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. He believes the separation authority on his orders and DD Form 214 cited as AR 635-200 (dated 6 July 2005), Chapter 10, does not accurately reflect the circumstances surrounding his discharge. He asserts that he was not afforded the rights outlined for the Soldier in Chapter 10.

b. AR 635-200, section 10-3c(1), states that a copy of the court-martial charge sheet (DD Form 458) must accompany the request. He has never seen these documents and the Army has not provided them to him. Furthermore, section 10-2c emphasizes that the Soldier must initiate a Chapter 10 discharge in a written request. However, he cannot recall making such a request, and the Army has been unable to

provide documentation supporting his alleged request. To date, he has not received a copy of his separation packet from the Army.

3. The applicant provides:

a. DD Form 214, which reflects the applicant was discharged on 21 April 2010, under the provisions of AR 635-200 (Active Duty Enlisted Administrative Separations), chapter 10, in lieu of trial by court-martial, separation code KFS, reentry code, 4, and character of service of under other than honorable conditions. He completed 3 years and 25 days of active service this period. Item 18 (Remarks) indicates that he served in a designated imminent danger pay area, Iraq from 22 May 2008 thru 14 August 2009.

b. ERB, dated 16 April 2010, includes the applicant's service data, military and civilian education, awards and decorations, and assignment history, among other details.

c. ARCOM certificate reflects the applicant was awarded for his exceptionally commendable service during Operation Iraqi Freedom 08-10.

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

a. He enlisted in the Regular Army on 27 March 2007.

b. DD Form 2707 (Confinement Order), dated 6 April 2010, reflects the applicant was placed in pre-trial confinement as a result of nonjudicial punishment. Item 4 (Offenses/Charges of UCMJ Articles Violated) states, "Article 86(x2), Failure to Report; Article 89, Disrespect toward a superior commissioned officer; Article 90(x7), Willful disobedience toward a noncommissioned officer; Article 112a, Wrongful use of a controlled substance.

c. DD Form 458 (Charge Sheet), dated 6 April 2010, court-martial charges were preferred against the applicant for two specifications of Violation of Article 86 (Absence Without Leave), one specification of Violation of Article 89 (Disrespect toward a superior commissioned officer), and seven specifications of Violation of Article 90 (Willfully disobeying superior commissioned officer).

d. On 6 April 2010, 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

e. 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 administratively reduced to Private E1 and discharged under other than honorable conditions.

f. As previously stated in paragraph 3a, the applicant's DD Form 214 reflects the applicant was discharged on 21 April 2010, under the provisions of AR 635-200, chapter 10, with a character of service of under other than honorable conditions. He completed 3 years and 25 days of active service this period. He served in a designated imminent danger pay area, Iraq, from 22 May 2008 thru 14 August 2009. 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) – 13 April 2010
- 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. There is no evidence that the applicant applied to the Army Discharge Review Board for review of his discharge within the board's 15 year statute of limitations.

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:

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 overcome the misconduct. The Board noted the applicant's record had numerous violations of the Uniform Code of Military Justice (UCMJ), from absence without leave (Article 86), disrespect toward a superior commissioned officer (Article 89), and seven specifications of willful disobedience toward a noncommissioned officer (Article 90), to include being charged with wrongful use of a controlled substance (Article 112a).

2. The Board found the applicant provided no post-service achievements, character references, or evidence of rehabilitation for consideration of clemency. In the absence of such documentation, and given the severity and frequency of the misconduct, the Board found insufficient evidence to warrant an upgrade. The discharge was appropriate and properly executed in accordance with regulatory guidance. Therefore, relief is denied.

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 635-200 (Personnel Separations - Enlisted Personnel), 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//