

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 January 2025

DOCKET NUMBER: AR20240006941

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 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, he believes that his separation was involuntary due to the circumstances surrounding it. He attempted to sign up for a longer term of service instead of accepting discharge but was denied reenlistment during his court-martial hearing. He firmly maintains that his intent during his initial enlistment was to serve and defend his country. Since then, he has made additional attempts to reenlist but has been denied each time. He feels that the Chapter 10 involuntary separation was unjust and unfair.
3. The applicant provided a copy of his DD Form 214, which reflects he was discharged on 18 October 2005 under the provision of Army Regulation (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 as under other than honorable conditions. He completed 11 months and 17 days net active service this period, with lost time from 2 March 2004 through 12 August 2005.

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

a. He enlisted in the Regular Army on 21 May 2003.

b. His duty status changed as follows:

- from present for duty (PDY) to absent without leave (AWOL), effective 2 March 2004
- from AWOL to dropped from the rolls (DFR), effective 1 April 2004
- from DFR to civilian confinement, effective 18 July 2005
- from civilian confinement to PDY, effective 13 August 2005

c. Report of Return of Absentee shows apprehension efforts were terminated as he was returned to military control on or about 18 July 2005, after civil apprehension on local warrants mostly for traffic warrants.

d. DD Form 458 (Charge Sheet) reflects court martial charges were preferred on 23 August 2005, for the following charges:

- wrongful use, possession, etc., of a controlled substance between on or about 19 January 2004 and on or about 18 February 2004
- on or about 2 March 2004, absenting himself without authority from his unit, and did remain so absent in desertion until he was apprehended on or about 10 August 2005

e. On 22 September 2005, the applicant voluntarily requested discharge in lieu of trial by court-martial under the provisions (UP) of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 10. He understood that he may request discharge because he is guilty of one or more of the charges, or lesser included offenses contained therein, which have been preferred against him under the Uniform Code of Military Justice (UCMJ) and authorize the imposition of a bad-conduct or dishonorable discharge. He had the opportunity to consult with counsel who has fully advised him of the nature of his rights under the UCMJ, the elements of the offense with which he was charged, any relevant lesser included offense(s) thereto, and the facts that must be established by competent evidence beyond a reasonable doubt to sustain a finding of guilty; the possible defenses which appear to be available at this time; and the maximum permissible punishment if he was found guilty.

- He understood that, if his request for discharge is accepted, he may be discharged under conditions other than honorable
- He had been advised and understood the possible effects of an Under Other Than Honorable Discharge and that as a result of the issuance of such discharge, he will be deprived of many or all Army benefits, that he may be

ineligible for many or all benefits administered by the Veteran's Administration, and that he may be deprived of his rights and benefits as a veteran under both Federal and State law

- He also understood that he may expect to encounter substantial prejudice in civilian life because of an Under Other Than Honorable Discharge

f. On 6 October 2005, the separation authority approved separation UP of chapter 10, of AR 635-200. He directed the applicant be discharged with a characterization of under other than honorable conditions.

g. The applicant's DD Form 214 reflects he was discharged on 18 October 2005 under the provision of AR 635-200, chapter 10, in lieu of trial by court martial, separation code KFS, reentry code 4, and character of service as under other than honorable conditions. He completed 11 months and 17 days net active service this period, with lost time from 2 March 2004 through 12 August 2005.

5. 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.

6. 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.

7. The Board should consider the applicant's submissions 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 pattern of misconduct leading to the applicant's separation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

//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 (AR) 635-200 (Active Duty Enlisted Administrative Separations) provides the basic authority for the separation of enlisted personnel. Chapter 3, Section II provides the authorized types of characterization of service or description of separation.
 - a. Paragraph 3-7a states an honorable discharge is a separation with honor and is appropriate when the quality of the Soldier'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 states a general discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7c states under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

d. Chapter 10 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 a 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. Army policy states that although an honorable or general, under honorable conditions discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

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. 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//