

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 February 2025

DOCKET NUMBER: AR20240007033

APPLICANT REQUESTS: in effect, an upgrade of his under other than honorable conditions characterization of service.

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), 18 April 2024
- Department of Veterans Affairs (VA) Form 21-4138, 18 April 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 he made a mistake back when he was in service and has dealt with it all his life. In the late 1980s, he was in the 21st Infantry Division at Fort Stewart, GA. He was in need of money so he asked a friend if he could borrow some. His friend did not have any money to lend him but told the applicant he could pawn his computer for money. The computer turned out to be stolen and the applicant took the blame. He insists he did not steal the computer from his friend.

3. A review of the applicant's record shows:

a. Following prior enlisted service in the U.S. Army Reserve, he enlisted in the Regular Army on 30 January 1986.

b. On 29 April 1987, court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) shows he was charged with three specifications of violation of Article 121 (Larceny and Wrongful Appropriation), Uniform Code of Military Justice.

(1) Specification 1: In that he did, on or about 30 September 1986, steal one Commodore 64k computer keyboard, one Commodore monitor, and two sets of battle dress uniforms, of a value of about \$600.00, the property of the Private Second Class R____ A. B____.

(2) Specification 2): In that he did, on or about 14 December 1987, steal a "Teac" music mixer, of a value of about \$100.00, the property of Sergeant J____ A. D____.

(3) Specification 3: In that he did, on or about 10 February 1987, steal two battle dress uniform shirts, one pair of battle dress uniform pants, one cashmere grey jacket, and two jackets, of a value of about \$145.00, the property of Corporal W____ J. G____ and Private First Class MC C____ III.

c. On 29 May 1987, after consulting with legal counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial, under Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10 and acknowledged the following:

(1) He made the request of his own free will and was not coerced by any person.

(2) His understanding that by requesting discharge, he was admitting guilt to the charges against him or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge.

(3) He understood that if his discharge request was approved, he may be discharged under conditions other than honorable and furnished an under other than honorable discharge certificate.

(4) He could be deprived of many or all Army benefits and he could be ineligible for many or all benefits administered by the Veteran's Administration.

(5) He could be deprived of his rights and benefits as a veteran under both Federal and State law and encounter substantial prejudice in civilian life because of an under other than honorable discharge.

(6) He understood that he must apply to the Army Discharge Review Board (ADRB) or the ABCMR if he wished review of his discharge and realized the act of consideration by either Board does not imply that his discharge will be upgraded.

(7) He elected not to submit a statement in his own behalf.

(8) He waived his right to have a separation medical examination.

d. On 15 June 1987, his immediate commander recommended approval of the request for discharge for the good of the service, with characterization of service under other than honorable conditions.

e. On 16 June 1987, his intermediate commander and brigade commander recommended approval of the request for discharge for the good of the service, with characterization of service under other than honorable conditions.

f. On 13 July 1987, the separation authority approved the recommended discharge, directed the applicant be reduced to the lowest enlisted grade of private (PV1)/E-1, and be issued an under other than honorable conditions discharge certificate.

g. The applicant was discharged on 21 July 1987. His DD Form 214 (Certificate of Release of Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, chapter 10, for the good of the service, in the rank/grade of PV1/E-1, and his service was characterized as under other than honorable conditions. He completed 1 year, 5 months, and 15 days of net active service during this period with lost time from 15 July 1987 to 21 July 1987. He was assigned the separation code of JFS and the RE code of 3, 3b, and 3c.

4. There is no indication the applicant applied to the ADRB for review of his discharge processing within the Board's 15-year statute of limitations.

5. 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.

6. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

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 and criminal nature of the 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.

<p>//SIGNED//</p> <p>X</p>
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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 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a Soldier who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where

required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization 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.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

e. When a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 10 for the Good of the Service in lieu of court-martial would receive a separation code of "JFS."

4. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted.
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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//