

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 February 2025

DOCKET NUMBER: AR20240007387

APPLICANT REQUESTS: upgrade of his under other than honorable conditions discharge and associated codes.

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
- Personal Statement
- Statement from his spouse

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 all he ever wanted was to be a Soldier. He served his first enlistment with honors and pride. He served in the Gulf War, and he reenlisted for 4 years. He never once had a negative counseling statement or any disciplinary action against him. He served as a squad leader and as a gunner. With one week left on his reenlistment, his wife went to the hospital with pregnancy complications. He was told to go and be with her and that his out-processing would be taken care of. Instead, he was reported absent without leave (AWOL). He does not know why his chain of command would do that to him. He knows he should have returned and dealt with the situation, but he feared what would happen if he did. He regrets his actions every day.
3. His spouse provides a statement that states the time her spouse was counted AWOL was time he was allowed to be with her at the hospital during a tough pregnancy. He was told he was cleared by the Army, but he later found out he was reported AWOL.
4. Review of the applicant's service records shows:

a. He enlisted in the Regular Army for 4 years and 17 weeks on 22 June 1989. He completed training and was awarded military occupational specialty 11B, Infantryman.

b. The applicant attained the rank/grade of specialist (SPC)/E-4 and he reenlisted for 4 years on 28 May 1993. He was later assigned to 1st Battalion, 22nd Infantry, Fort Hood, TX.

c. On 22 April 1997, his unit reported him in an absent without leave (AWOL) status and later dropped him from the rolls as a deserter on 22 May 1997.

d. The applicant was apprehended by civil authorities on 28 September 2002 in Marlin, TX, and placed in the county jail and then returned to military control.

e. On 12 December 2002, court-martial charges were preferred against the applicant. The relevant DD Form 458 (Charge Sheet) shows he was charged with one specification of AWOL from 22 April 1997 to 2 October 2002.

f. The applicant's battalion and brigade commanders recommended trial by a special court-martial authorized to adjudge a bad conduct discharge. Additionally, the Staff Judge Advocate reviewed the charges for legal sufficiency and recommended trial by a special court-martial.

g. On 18 December 2002, the Staff Judge Advocate requested the Commander, 4th Infantry Division direct that the applicant be retained beyond the expiration of his term of service (ETS). His current ETS date is January 2002. The applicant should be retained until 18 December 2003 or the completion of the Court- Martial and appellate review process. The Commander, 4th Infantry Division approve the request.

h. On 19 February 2003, the applicant's company commander submitted a statement that reads: He has been the applicant's commander since his return. He served the time remaining on his enlistment and is now on administrative hold. The applicant has won his (the commander's) my respect, the respect of his NCO chain, as well as of his fellow soldiers. They would have liked to go to war with him. Given his combat experience and present attitude, he knew he would be a significant asset. He has spoken with the applicant and he strongly desired to deploy and serve his country in combat a second time. He also spoke with him about his desertion. While he (the commander) in no way condones his decision-making in May 1997, the applicant has earned trust in the months since his return. He takes initiative and assumes leadership positions when appropriate. Since his return, he has actively and successfully performed as a soldier. He did not simply await the disposition of his charges. The applicant volunteered to deploy, and he wanted him to deploy with his company. Unfortunately, it appears that because of his administrative hold status, he cannot

deploy. Based on his service both before and after his desertion, he recommends that the applicant receive a discharge in lieu of court-martial with a general discharge.

h. The applicant's platoon leader and squad leader also rendered statements speaking positively of the applicant and described him as a model Soldier. He sets the standard for other E-4's and brings vital experience to the platoon. He made a poor decision 5 years ago when he decided to go AWOL however, his character service and morals are not in question. They believe that he was put in a tough situation, and he made the wrong decision. What matters now is that he is trying to rectify the condition.

i. On 12 February 2003, the applicant consulted with counsel and was advised of the contemplated trial by court-martial for an offense (AWOL) punishable by a bad conduct or a dishonorable discharge. Following this consult, the applicant voluntarily requested discharge for the good of the service, in lieu of trial by court-martial, under the provisions (UP) of Army Regulation (AR) 635-200 (Personnel Separations, now called Active Duty Enlisted Administrative Separations) chapter 10. He acknowledged the following:

(1) He was making this request of his own free will and had not been subjected to any coercion whatsoever by any person; he has been advised of the implications that are attached to it.

(2) He understood that as a result of his request he could be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate.

(3) He understood that, if his request for discharge is accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Discharge Certificate.

(4) He unacknowledged he had been advised and understood that, as a result of the issuance of such a discharge, he would be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered by the Veterans 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. He also elected to submit a statement on his own behalf.

j. On 18 February 2003, the applicant's defense counsel requested a discharge in lieu of court-martial with a general discharge under honorable condition. He stated the applicant served in operations Desert Shield, Desert Storm, and Desert Comfort; earned the Combat Infantrymen's Badge and other awards and citations. His departure was just days before his terminal leave started. Given his combat experience in 1991, his

otherwise exemplary military record, the fact that his departure in 1997 was just days before approved terminal leave, and the fact that the applicant has faithfully served the lost time and more, a discharge in lieu of court-martial with a general discharge is an appropriate disposition of this unusual case.

k. On 15 November 2005, his chain of command recommended approval of his voluntary request for discharge with issuance of an under other than honorable conditions discharge.

l. On 26 February 2003, following a legal review for legal sufficiency, the separation authority approved the applicant's request for discharge and ordered him discharge under other than honorable conditions and reduced to the grade of private/E-1.

m. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged from active duty on 19 March 2003 under the provisions of AR 635-200, chapter 10 (in lieu of trial by a court-martial) in the rank of private/E-1, with an under other than honorable conditions characterization of service (Separation Code KFS and Reentry Code 4). He completed 8 years, 2 months, and 19 days of active service.

- The applicant had 1,988 or 5 years, 5 months, and 5 days of lost time (22 April 1997 to 1 October 2002)
- The Remarks Block listed his immediate reenlistment as well as his Continuous Honorable Service

n. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

4. By regulation, AR 635-200 sets forth the basic authority for the separation of enlisted personnel. 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.

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.

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 warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the lengthy period of honorable service completed prior to any misconduct by the applicant, the type of misconduct leading to the applicant's separation (AWOL), and the guidance on liberal consideration, the Board concluded there was sufficient evidence to upgrade the applicant's characterization of service to General, Under Honorable Conditions. However, the Board found no justification for changing the separation codes, as requested.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:X	:X	:X	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

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 (AR) 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides 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.

a. Paragraph 3-7a states 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 states 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.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) states that SPD codes are three-character alphabetic combinations which identify reasons for and types of separation from active duty. The "KFS" SPD code is the correct code for Soldiers separating under chapter 10 of Army Regulation 635-200, in lieu of trial by court-martial. The SPD/RE Code Cross Reference Table provides instructions for determining the RE code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code and a corresponding RE code. The table in effect at the time of his discharge shows that SPD code "KFS" has a corresponding RE code of "4."

4. Army Regulation 601-210 (Regular Army and Army Reserve Enlistment Program), in effect at the time, covered eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army and U.S. Army Reserve. It stated that individuals would be assigned RE codes based on their service records or the reason for discharge prior to discharge or release from active duty. Table 3-1 included a list of Regular Army RE codes.

- RE-1 applies to Soldiers completing their term of active service who are considered qualified to reenter the U.S. Army; they are qualified for enlistment if all other criteria are met
- RE-3 applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable; they are ineligible unless a waiver is granted
- RE-4 applies to Soldiers separated from their last period of service with a nonwaivable disqualification

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/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//