

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 March 2025

DOCKET NUMBER: AR20240007711

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to honorable
- correction of his narrative reason for separation with respective separation code

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

- DD Form 149 (Application for Correction of Military Record)
- Letters of Commendation and Appreciation
- Non-commissioned Officer's (NCO) Course Diploma, dated 2 October 1980
- DD Form 256A (Honorable Discharge Certificate), dated 29 October 1981

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 served his country honorably with pride and accomplishment as shown on his initial enlistment discharge documents. He received multiple commendations and awards to include the George S. Patton Jr. award and would like his record to reflect as such. One unfortunate civil decision affected his entire service rendering his final discharge as under other than honorable conditions. Since leaving the military, he has dedicated his life to his community, continues to dedicate himself to his country, and has become an ordained minister at his church. If he were physically able to enlist, he would do so.

3. The applicant provides the following:

a. Letters of commendation and appreciation highlighting his outstanding performance and dedication to mission achievement dated as follows:

- Letter of Commendation, dated 27 July 1979

- Letter of Appreciation, dated 8 January 1980
- Letter of Commendation, dated 15 April 1980
- Letter of Commendation, dated 13 June 1980
- Letter of Commendation, dated 28 November 1980

b. An NCO course diploma showing completion of the NCO Academy with the 4th Infantry Division (Mechanized) on 2 October 1980.

c. A DD Form 256A, dated 29 October 1981 shows the applicant completed honorable service during his initial enlistment.

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

a. On 16 April 1979, he enlisted in the Regular Army.

b. On 10 May 1983, court-martial charges were preferred on the applicant for violation of the Uniform Code of Military Justice, Article 86 (Absent Without Leave (AWOL)) for absenting himself from his organization from on or about 12 January 1983 with no end date, placing him on dropped from rolls status.

c. On 30 March 1987, court-martial charges were preferred on the applicant for violation of the Uniform Code of Military Justice, Article 86 AWOL, for absenting himself from his organization from on or about 12 January 1983 until on or about 30 March 1987.

d. On 30 March 1987, after consulting with legal counsel he requested a discharge in lieu of trial by courts-martial under the provisions of chapter 10, Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations). He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a Veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life

e. On 1 April 1987, Order Number 091-31 was issued retroactively assigning him for return to military control at Fort Sill, Oklahoma effective 30 March 1987.

f. On 15 April 1987, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge in lieu of trial by courts-martial. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

g. On 13 May 1987, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 3 years, 10 months, and 10 days of active service with lost time from 12 January 1983 to 29 March 1987. He was assigned separation code KFS and the narrative reason for separation listed as "For the Good of Service - In Lieu of Trial by Court-Martial," with reentry code RE-3b. He was awarded the following:

- Army Service Ribbon
- Expert Marksmanship Badge (Pistol .45 Caliber)

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

6. By regulation (AR 635-8), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

7. By regulation (AR 635-5-1), provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 28 of the DD Form 214 exactly as listed in Tables 2-2 and Tables 2-3 of the regulation. Table 2-3 (Enlisted Personnel) lists for SPD code KFS, the narrative reason as, "in lieu of trial by court-martial" in accordance with AR 635-200.

8. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service/in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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 petition and available military records, the Board noted the applicant's contentions that his initial enlistment was marked by honorable service, commendations, and awards, and that a single civil decision unfairly impacted his military record. He further highlights his post-service contributions to his community and his continued dedication to his country.

2. The Board acknowledged the applicant's commendable performance during his initial enlistment, as evidenced by multiple letters of commendation and appreciation, completion of the NCO Academy, and receipt of a DD Form 256A for honorable service, these achievements occurred prior to the misconduct that led to his discharge. However, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of the applicant being absent without leave (AWOL) for over four years, from 12 January 1983 to 30 March 1987. The applicant's narrative reason for separation, "For the Good of Service – In Lieu of Trial by Court-Martial," and the corresponding separation code KFS, are both accurate and consistent with regulatory guidance outlined in AR 635-5-1. The DD Form 214 appropriately reflects the conditions at the time of separation, and there is no evidence of error or injustice in its preparation. In light of the seriousness of the misconduct, the voluntary nature of the discharge request, and the regulatory accuracy of the DD Form 214, the Board denied relief for an upgrade of the applicant's discharge and correction of the narrative reason for separation.

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 635-5 (Separation Processing and Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).
3. Army Regulation 635-5-1 (Separation Program Designator Codes) provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in Block 28 of the DD Form 214 exactly as listed in Tables 2-2 and Tables 2-3 of the regulation. Table 2-3 (Enlisted

Personnel) lists for SPD code KFS, the narrative reason as, "in lieu of trial by courts-martial" in accordance with AR 635-200.

4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service/in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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.

a. 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.

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//