

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240008039

APPLICANT REQUESTS: DD Form 214 (Certificate of Release or Discharge from Active Duty) to be changed to reflect:

- Item 24 (Character of Service): honorable vice under other than honorable conditions
- Item 26 (Separation Code): JFF vice KFS
- Item 27 (Reenlistment Code): RE-1 vice RE-3b
- Item 28 (Narrative Reason for Separation): secretarial authority vice for the good of the service – in lieu of court martial

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel Brief
- Personal statement
- DD Form 4 (Enlistment/Reenlistment Document), 4 September 1986
- DA Form 2-1 (Personnel Qualification Record – Part II)
- DD Form 214, 21 July 1987
- Support letter, M.H.
- Support letter, M.R.
- Support letter, L.L.R.
- Support letter, J.D.G.

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 now has new and material evidence that he wishes to present to the Honorable Board, and his request is being made based on material error and material injustice. In a personal statement he states he had just finished high school

he was 17 years old. He went to basic training he thought it was great and challenging. He got to permanent party everything was going fine until he received a call saying his daughter had been murdered. His daughter was only 3 months old. His ex-girlfriend's boyfriend had smashed her ribs in and killed her. He was supposed to come back in a week, he did not turn himself in for months trying to wait around and see what they were going to do to him. He is serving life in Michigan department of correction. He pled guilty because they were seeking the death penalty. When he got back, they took him to court for absent without leave (AWOL) and told him he could go to court and take the chance of going to Leavenworth or take a dishonorable discharge. If he knew what he knows now he would have gone to court, but he was a child then.

3. The applicant's counsel respectfully requests to have the applicant's military records changed from "Under Other than Honorable" to "Honorable", his narrative reason be changed from "In Lieu of Trial by Court Martial" to "Secretarial Authority" with corresponding separation code, and his reenry code changed from RE-3b to RE-1. This request is made under the theories of material error and material injustice. Counsel also states:

a. Statement of facts related to the applicant's service. (See counsel brief in supporting docs).

b. Counsel argues jurisdiction and timeliness as well as material injustice. (See counsel brief in supporting docs).

c. In closing counsel states the applicant is one deserving of a discharge upgrade. The applicant admits his conduct was wrong and has bounced back through his post-service conduct. The applicant respectfully requests that this Honorable Board allow the applicant to gain closure from a stained spot in his life and upgrade his discharge.

4. The applicant enlisted in the Regular Army on 4 September 1986. He held military occupational specialty 11B (Infantryman).

5. DD Form 458 (Charge Sheet) shows court-martial charges were preferred on 8 June 1987, for on or about 3 March 1987, without authority, absent himself from his unit, and did remain so absent until on or about 5 June 1987.

6. After consultation with counsel he voluntarily requested discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. He understood that he may request discharge for the good of the service because of the charge preferred against him under the Uniform Code of Military Justice, which authorizes the imposition of a bad conduct discharge or dishonorable discharge. He also understood:

- He may be discharged under conditions other than honorable conditions and furnished an Under Other Than Honorable Discharge Certificate
- He may be deprived of many or all Army benefits, that 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 because of an under other than honorable conditions discharge
- He did not desire a physical evaluation prior to separation

7. On 15 June 1987, his chain of command recommended approval of separation under the provisions of AR 635-200, chapter 10, and that his character of service be under other than honorable conditions.

8. On 18 June 1987, the separation authority approved discharge under the provisions of chapter 10, AR 635-200. He directed an under other than honorable conditions discharge be issued.

9. Accordingly, he was discharged on 21 July 1987. His DD Form 214 shows in item 18 (Remarks) DD Form 215 will be issued to provide missing information. It also shows:

- Item 24 (Character of Service): under other than honorable conditions
- Item 25 (Separation Authority): AR 635-200, chapter 10
- Item 26 (Separation Code): KFS
- Item 27 (Reenlistment Code): RE-3b
- Item 28 (Narrative Reason for Separation): For the Good of the Service – In Lieu of Court Martial
- Item 29 (Date of Time Lost During this Period): 870303 – 870604 (3 March 1987 – 4 June 1987)

10. 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.

11. The applicant provides:

a. Support letter, M.H. stating in part he was initially impressed with the applicant's generosity, good nature, and diligence when he met him eight years ago. He was working as a Frito-Lay sales representative and met me on lunch break to open his home to him as a favor to a friend. They had several phone detail conversations before meeting, and he was consistently friendly, trustworthy, and helpful. (Entire letter is available for review in supporting docs).

b. Support letter, M.R. states in part he strongly feels his brother has made significant improvements in his life from when he was younger and still finding his way. The 47-years he has been on earth, and around his brother, you can see the growth he has made upon transitioning from a boy to a respectable and responsible adult in the community. (Entire letter is available for review in supporting docs).

c. Support letter, L.L.R. states in part for the past 15 years she has known the applicant, he has been a wonderful influence and motivation for her husband and herself. From all that she knows about him, he is a man of his word and has a strong influence on the family.

d. Support letter, J.D.G. states in part he has known the applicant for years. He has been a close friend and co-worker. He has a strong work ethic, and the efficiency in completing job related tasks in a timely manner. (Entire letter is available for review in supporting docs).

12. 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. 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.

13. 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 outweigh the misconduct, which includes 94 days of unauthorized absence (AWOL) and apprehension by civilian authorities..

2. The Board acknowledges the character letters submitted in support of the applicant, which attest to his strong work ethic, efficiency in completing job-related tasks, and significant personal growth. The applicant's transition from adolescence to a responsible and respected member of his community, along with his commendable post-service contributions, is noted with appreciation. However, the applicant's military service record reflects multiple instances of misconduct during his enlistment period, culminating in 10 months and 17 days of net service with a documented loss time from 3 March 1987 to 4 June 1987.

3. In accordance with regulatory guidance, the Board found that there is insufficient evidence to warrant a change to the applicant's RE-Code or separation code. Reference to the SPD/RE Code Cross-Reference Table in effect at the time of discharge confirms that a RE-3b code was appropriately assigned to members separated under these provisions with an SPD code of KFS. The Board determined that there was no sufficient evidence of an error or injustice that would warrant a change in the narrative reason for separation. Based on the preponderance of evidence, the Board concludes that the applicant's character of service, narrative reason, RE-Code, and separation code were appropriately assigned at the time of discharge. Therefore, relief is denied.

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//

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) 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. 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 (1) states 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered

to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) states 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. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

3. AR 601-210 (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and non-waiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

a. RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

b. RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

c. RE-4 Applies to: Person separated from last period of service with a non-waiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years of active Federal service. Eligibility: Ineligible for enlistment.

4. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "KFS" as the appropriate code to assign enlisted Soldiers who are voluntarily discharged under the provisions of Army Regulation 635-200, for the good of the service – in lieu of court-martial. The SPD Code/RE Code Cross Reference Table shows that a Soldier assigned an SPD Code of "KFS" will be assigned an RE Code of "4." SPD code of "JFF" as the appropriate code to assign enlisted Soldiers who are

discharged under the provisions of AR 635-200 with a narrative reason of "Secretarial Authority." The Secretary of the Army will determine RE code for separations under Secretarial authority. SPD code may be used when HQDA message or other directive authorizes voluntary separation in an individual case or category of cases.

On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and 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 on the basis of 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//