

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 March 2025

DOCKET NUMBER: AR20240008362

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

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record), 24 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.

1. The applicant states:

a. When he enlisted in the Army for a six-year term, he did so with the understanding and assurance from his recruiter that he would be able to pursue a higher education concurrently with his service. The opportunity for higher education was a crucial factor in his decision to enlist, as he had aspirations to provide a better future for his family. However, upon being assigned to the 82nd Airborne Division as an infantryman, it became clear that the constant field deployments and training schedules would make it impossible for him to attend college.

b. While in the Army, he found himself facing an untenable situation where he had to choose between his duty to his country and his commitment to his family. The continuous and rigorous nature of the training left no opportunity to engage in educational pursuits, contrary to what was initially communicated to him by his recruiter. The disparity between what was promised, and the realities of his service role placed him in an exceedingly difficult position. Compelled by the need to uphold his responsibilities and after exhaustive attempts to reconcile his service commitments with his personal circumstances, he made the decision to go absent without leave (AWOL) as a last resort. He regrets how these events unfolded and the choices he made under

stress. He believes that an upgrade of his discharge status would reflect the circumstances that influenced his decisions and recognize his initial intent to serve honorably.

2. A review of his record shows:

a. He enlisted in the Regular Army on 21 June 2000.

b. Three DA Forms 4187 (Personnel Action), show his duty status changed on the following dates:

- Present for Duty (PDY) to AWOL – 7 March 2001
- AWOL to Dropped from Rolls (DFR) – 6 April 2001
- DFR to PDY – 11 June 2002

c. The DA Form 458 (Charge Sheet), 24 June 2002, shows he was charged with one specification of being AWOL from on or about 1 March 2001 to on or about 11 June 2002.

d. On 27 June 2002, the applicant submitted a request for voluntary discharge in lieu of trial by court-martial, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10. He acknowledged he made the request of his own free will and was not coerced by any person. In his request for discharge, he acknowledged he understood the elements of the offense charged, discussed the elements and evidence with a trial defense lawyer detailed to represent him, and understood that he was guilty of a charge against him or of a lesser included offense therein contained which also authorized the imposition of a punitive discharge.

e. He further acknowledged he understood that if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veteran's Administration, 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.

f. On 28 June 2002, the applicant's immediate and intermediate commanders recommended approval of the applicant's request for discharge, under the provisions of AR 635-200, chapter 10, in lieu of trial by court-martial with a characterization of service of under other than honorable conditions.

g. On the same day, the separation authority approved the applicant's request for discharge, under the provisions of AR 635-200, chapter 10, in lieu of trial by court-martial. He directed the applicant be issued an under other than honorable conditions characterization of service and he be reduced to the lowest enlisted grade.

h. The applicant was discharged on 18 July 2002. 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 in lieu of trial by court-martial in the rank/grade of private/E-1, and his service was characterized as under other than honorable conditions. He completed 9 months and 11 days of net active service during this period with lost time from 1 March 2001 to 10 June 2002. He was assigned the separation code of KFS and the RE code of 4.

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

4. 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.

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:

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 noted the applicant's contentions that he enlisted in the Army with the understanding that he would be able to pursue higher education concurrently with his military service. Further stating that the demanding nature of his assignment to the 82nd Airborne Division made it impossible to fulfill his educational aspirations, ultimately leading to a conflict between his military duties and family responsibilities.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of being AWOL for over 15 months. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board recognized the applicant's personal challenges and his stated intent to serve honorably, however, the seriousness of the misconduct specifically the extended period of AWOL warrants the characterization of service the applicant received. The discharge was administratively and legally appropriate, and

there is no evidence of error or injustice in the processing of his separation. Therefore, the Board determined that relief is without merit, and the request for an upgrade of his discharge is denied.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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//
X

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 lieu of court-martial would receive a separation code of "KFS."

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//