

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 April 2025

DOCKET NUMBER: AR20240009070

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions discharge to honorable
- issuance of two DD Forms 214 (Certificate of Release or Discharge from Active Duty) for his periods of active duty service
- reinstatement of his rank/grade to sergeant (SGT)/E-5 on his DD Forms 214

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

- DD Form 149 (Application for Correction of Military Record), 30 January 1982
- DD Form 214, 23 May 1985
- DD Forms 4 (Enlistment or Reenlistment Agreement), 27 July 1978 and 31 January 1982
- Request for Leave, 3 January 1985
- letter, Department of Veterans Affairs (VA), 2018
- VA Rating Decision Filing Statement, 20 December 2018

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 enlisted and completed service from 1978 to 1982 and was honorably discharged. He reenlisted at the rank of SGT. He was unjustly discharged after having received awards and being approved for terminal leave from 3 January to 30 January 1985. He was cleared to depart from Germany. This is a contradiction of his approved leave starting after his obligated service.
3. He provides copies of military documents (10 pages) from his service records.

4. The applicant's request for issuance of a new DD Form 214 for his first period of service was previously addressed. A DD Form 214 for his first period of service was administratively issued to him. This issue will not be further considered by the Board.

5. A review of the applicant's service records show the following:

a. On 31 July 1978, he enlisted in the U.S. Army Reserve for 6 years. A DA Form 3286-40 (Statements for Enlistment) reflects he volunteered to serve in the Regular Army (RA) for 4 years in a job assignment specified by the Army.

b. On 30 January 1982, he was honorably discharged by reason of immediate reenlistment. His DD Form 214 for this period shows his rank/grade as SGT/E-5 and his net active service this period as 3 years and 6 months.

c. On 31 January 1982, he reenlisted in the RA at his unit, 1st Battalion, 10th Field Artillery, Germany, for 3 years beginning in the rank/grade of SGT/E-5.

d. An undated DA Form 31 (Request and Authority for Leave), reflects his request for terminal leave from 3 January to 30 January 1985. The signature block for authenticating authority is blank.

e. His status was changed on:

- 10 January 1985 to absent without leave (AWOL)
- 8 February 1985 from AWOL to dropped from the rolls (DFR)
- 8 March 1985 from DFR to present for duty (PDY)

f. On 18 March 1985 a court martial charge was preferred against him. A DD Form 458 (Charge Sheet) shows he was charged with AWOL from U.S. Army Processing Company, U.S. Army Personnel Control Facility, Fort Knox, from 10 January 1985 to 8 March 1985.

f. On the same date, he admitted in writing to being AWOL for administrative purposes, declaring he had been advised by his defense counsel that the government had not received the necessary documentation or records to obtain a conviction by courts-martial. He was further advised by his counsel that without these records he could not completely advise him. Nevertheless, he waived all defenses and willingly, voluntarily declared he was AWOL from 10 January 1985 to 8 March 1985.

g. On 4 April 1985, he was granted indefinite excess leave pending approval of his request for discharge.

h. A memorandum reflecting his voluntary request for discharge under the provisions of Chapter 10, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), and the separation authority memorandum are not available in his records.

i. On 23 May 1985, the applicant was discharged. His DD Form 214 reflects he was separated under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service-in lieu of trial by court-martial, with a character of service of under other than honorable conditions. He completed 3 years, 1 month, and 26 days of net active service this period; he had 3 years and 6 months of prior active service.

6. On 12 January 1987, the Army Discharge Review Board (ADRB) denied his request for an upgrade of his discharge, finding it was both proper and equitable.

a. In reaching its decision, the Board noted the following in regard to:

(1) due process; the records were available at the time of this ADRB hearing, and on:

- 4 April 1985, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, chapter 10
- 17 April 1985, his unit commander recommended approval of his request
- 26 April 1985, the separation authority approved his request for discharge with an under other than honorable conditions characterization

(2) his issues raised in requesting relief; the Board rejected his issues that he was authorized terminal leave and found instead that there was no valid documentation that he was authorized terminal leave.

b. The Board administratively corrected his DD Form 214, by reissuing two DD Forms 214. These corrections show honorable service and his rank/grade as SGT/E-5; on his next DD Form 214, his rank/pay grade was shown as private/E-1 at the subsequent expiration term of service.

7. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. However, the Board found no grounds for relief. His discharge under other than honorable conditions was proper, due to his admitted AWOL status and voluntary discharge request under Army Regulation 635-200. Prior corrections addressed his DD Forms 214 and rank status, and no evidence supports upgrading his discharge or reinstating his rank. Based upon the misconduct and a lack of mitigation or clemency evidence submitted by the applicant, the Board concluded there was insufficient evidence of an error or injustice warranting relief.

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3-7 provided:

(1) 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. Only the honorable characterization may be awarded a member upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

b. Chapter 10 stated a member who has committed an offense or offenses, the punishment of which under the UCMJ and the Manual for Court Martial, 1984 (Revised Edition) 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 member, or, where required, after referral, until final actions by the court-martial convening authority.

3. Army Regulation 600-200 (Enlisted Personnel Management System), then in effect, prescribed policies and procedures for career management of Army enlisted personnel, classification and reclassification of enlisted Soldiers in a military occupational specialty,

utilization of enlisted personnel, testing active Army enlisted Soldiers under the Individual Training Evaluation, and promotions and reductions in rank.

a. Paragraph 6-11. Approval for discharge from service under other than honorable conditions. When the separation authority determines that a soldier is to be discharged from the service under other than honorable conditions, he or she will be reduced to the lowest enlisted grade. Board action is not required for this reduction. The commander having separation authority will, when directing a discharge under other than honorable conditions, or when directed by higher authority, direct the Soldier to be reduced to private, E-1.

b. Paragraph 6-17. Restoration to former grades. Grade restoration may result from setting aside, mitigation, or suspension of nonjudicial punishment; reversal of conviction by a civil court; restoration of grade when the reduction sentence or other sentence resulting in reduction of the UCMJ is set aside or disapproved.

4. 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/NR) 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.

//NOTHING FOLLOWS//