

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 April 2025

DOCKET NUMBER: AR20240010526

APPLICANT AND HIS COUNSEL REQUEST:

- upgrade of his under other than honorable conditions characterization to under honorable conditions (general) or honorable
- a change in the narrative reason for separation to show "Secretarial Authority," with respective separation code

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

- DD Forms 149 (Application for Correction of Military Record)
- Counsel's Letter and Petition with listed Exhibits
- Table of Contents
- Exhibit – A – Collection of Statutes and Regulations
- Exhibit – B – Excerpts of DOD instructions number 1332.28 Discharge Review Board (DRB) procedures and standards (April 4, 2004)
- Exhibit – C – Wilkie Memo
- Exhibit – D – Declaration of the Applicant
- Exhibit – E – Excerpts from the Applicant Military Records
- Exhibit – F – Education and Professional Certification Records
- Exhibit – G – Coast Guard Auxiliary Records
- Exhibit – H – President's Volunteer Service Award
- Exhibit – I – Resume
- Exhibit – J – July 16, 2009, Thank You Letter
- Exhibits – K-O – Five Character Reference Statements
- Exhibit – P – Army Board of Correction for Military Records (ABCMR) Docket Number AR20210007330 on 27 May 2021
- Exhibit – Q – ABCMR Docket Number AR20200002107 on 12 May 2021
- Exhibit – R – ABCMR Docket Number AR20180008473 on 28 July 2020

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. Through counsel, the applicant states he is requesting an upgrade of his characterization of service to honorable, and in the alternative, a general, under honorable conditions discharge. Additionally, a change in the narrative reason for separation to reflect "Secretarial Authority," with corresponding separation code of JFF. Counsel believes the applicant has paid for his misdeeds and has demonstrated acceptance of responsibility, remorse, and atonement for his misconduct. Following his discharge over 30-years ago, he has furthered his professional education and maintained employment in the health care field. He has dedicated his life to volunteering and service through his 16-year membership in the United States Coast Guard Auxiliary and works as a volunteer police officer. His exemplary post-discharge record and acceptance of responsibility warrant an upgrade in his characterization of service and reason and authority for separation. Counsel provides additional details for supporting evidence available for review by the Board.
3. The applicant and his counsel provide:
  - a. A declaration from the applicant provides details of his service. Additionally, he states during his service period in Germany he was hit with a series of unfortunate events. His former wife divorced him and returned to the United States with their two sons. He began paying child support which was a substantial portion of his pay. He also had minimal contact with his sons. Subsequently, he was notified his father was terminally ill and shortly after returning stateside, he passed away. His death was incredibly hard. Financial hardships continued to mount in addition to grieving his father. He secured a second job which led to him receiving nonjudicial punishment for insufficient funds among other charges. The pressures began mounting as he received forfeiture of pay. He felt ostracized and demoralized as other Soldiers began talking about him and treating him differently. He did not feel the command supported him and ultimately elected to go absent without leave (AWOL). He was ashamed and the pressure was unbearable which subsequently led to his discharge in lieu of trial by court-martial. The applicant's full statement is available for review by the Board.
  - b. Five-character reference statements that describe the applicant as having an outstanding ethic work, with an outstanding skill set, a dedicated professional with strong work ethic, high integrity and honest with great customer service, reliable, efficient, has a positive attitude, timely, thorough, and always demonstrates a "can-do" attitude.

- 23 January 2010 – Mr. DM, MD, Letter of Reference
- 20 February 2024 – Mr. KTL, Retired
- 21 February 2024 – Mr. AM, Coworker
- 20 March 2024 – Mr. AS, Vice Division Commander, U.S. Coast Guard
- 14 May 2024 – Ms. JCM, Retired Lieutenant Colonel

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

a. He enlisted in the Regular Army on 10 November 1987, for a 3-year term of service. He had an immediate reenlistment on 7 August 1990.

b. His DA Form 2-1 (Personnel Qualification Record – Part II) shows in item 5 (Overseas Service) service in Germany from 4 March 1988 to 21 December 1990.

c. The applicant accepted non-judicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on 15 August 1991 for one specification of writing a \$120.00 check and dishonorably fail to maintain two specifications of failure to go to his appointed place of duty. His punishment included reduction to specialist (SPC), E-4

d. A DD Form 458 (Charge Sheet) shows charges were preferred on the applicant on 20 July 1992 for two specifications of AWOL from on or about 17 September 1991 to on or about 12 November 1991 and from on or about 13 November 1991 to on or about 13 July 1992.

e. On 20 July 1992, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged the rights available to him and the effect of waiving such rights. He elected not to submit a statement on his own behalf.

f. On 21 August 1992, the applicant's immediate commander recommended approval of his request for discharge for the good of the service. He recommended an under other than honorable conditions discharge. The commander further noted during a statement and interview extract the applicant noted his reason for AWOL was due to personal reasons.

g. On 27 August 1992, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge for the good of the service. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

h. On 15 September 1992, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 4 years of active service with approximately 301 days of lost time. He was assigned separation program designator (SPD) code KFS, by reason of "For the Good of the Service - In Lieu of Court-Martial," with reentry code 3. It also shows he was awarded or authorized:

- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade
- Noncommissioned professional Development Ribbon
- Overseas Service Ribbon
- Army Service Ribbon
- Air Assault Badge
- Army Good Conduct Medal
- Army Achievement Medal (3rd Award)

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

6. By regulation, (AR 635-200) a member may be separated when it is determined that he or she is unqualified for further military service because of unsatisfactory performance. The service of members separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military record.

7. 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, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with absenting himself from his unit from 17 September to 12 November 1991 and from 13 November 1991 to 13 July 1992, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation

proceedings and designated character of service assigned by his commander during separation. The Board noted the applicant's post-service achievements and character letters of reference to support clemency. Based on the applicant's statement detailing his financial hardships, and his volunteer service with the police department, and the U.S. Coast Guard Auxiliary. The Board determined relief was appropriate to amend his characterization of service and narrative reason for separation.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 15 September 1992 to show in:

- item 24 (Character of Service): under honorable conditions (General)
- item 26 (Separation Code): JFF
- item 28 (Narrative Reason for Separation): Secretarial Authority

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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 635-5-1 (Separation Program Designator (SPD) Codes) provides that separation codes are three-character alphabetic combinations that identify reasons for and types of separation from active duty. Separation code narrative reasons are aligned with applicable regulatory authority paragraphs. The separation code "KFS" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, by narrative reason of for the good of service-in lieu of court-martial.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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. 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.

c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

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/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//