

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 November 2023

DOCKET NUMBER: AR20230001385

APPLICANT REQUESTS: in effect, issuance of a discharge order from the U.S. Army Reserve.

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

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 needs a copy of his discharge orders. He is applying for his [REDACTED] Bar License and the [REDACTED] Supreme Court has asked for a copy of his discharge orders as part of their background check. He does not have a copy. He has contacted the U.S. Army Human Resources Command, the 88th Regional Support Command (his last unit), and the National Archives, and none of them has a copy of his discharge orders, so he was advised to contact the Army Review Boards Agency. He requests a copy of his discharge orders and if they cannot be found, he requests that the correction be made and that his discharge orders be generated.
3. Review of the applicant's service records shows:
  - a. The applicant executed an oath of office on 17 November 2003 and was appointed as a Reserve commissioned officer of the Army in the rank of first lieutenant. He was assigned to the 214th Legal Services Organization, Fort Snelling, MN.
  - b. On 29 June 2006, the U.S. Army Human Resources Command, St. Louis, published orders promoting him to captain (CPT) in the USAR.

c. On 13 September 2012, Headquarters, 88th Regional Support Command, informed the applicant that he was considered for promotion by a Department of the Army Reserve Components Mandatory Selection Board, but he was not selected for promotion (1st time).

d. The facts and circumstances surrounding his discharge are not available for review. However, his DA Form 5016 (Chronological Statement of Retirement Points) shows he was credited with a qualifying year of service each anniversary year, beginning on 18 November 2003, all the way through 17 November 2012. His last anniversary year started on 18 November 2013 and ended on 1 December 2013.

e. There are no discharge orders available.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a majority of the Board found relief is warranted.
2. A majority of the Board found that, through no fault of his own, the applicant's service record does not contain any documentation of the basis for his separation. The applicant cannot be held accountable for his servicing support unit's failure to ensure the documentation related to his discharge was properly filed. While the actual basis for his discharge is unknown, considering all the facts of the case a majority of the Board determined it would be equitable to correct the record to show he was honorably discharged on 1 December 2013 by reason of unqualified resignation.
3. The member in the minority determined that, while the applicant clearly served and there appears to be an administrative error in his discharge, without information regarding the circumstances of his discharge there is an insufficient basis for generating accurate discharge orders.

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 a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by publishing orders discharging the applicant from the USAR by reason of unqualified resignation effective 1 December 2013.

2/16/2024

X █  
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 CHAIRPERSON  
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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 135-175 (Army National Guard and Reserve – Separation of Officers) prescribes the policies, criteria, and procedures governing the separation of Reserve officers of the Army.

a. Paragraph 1-7, characterization of discharge. When an officer is separated pursuant to this regulation the officer's service will be characterized as Honorable, General (Under Honorable Conditions), or Under Other Than Honorable Conditions, depending on the circumstances. The character of service will be predicated on the officer's behavior and performance while a member of the Reserve of the Army. Characterization normally will be based on a pattern of behavior and duty performance rather than an isolated incident. However, there are circumstances in which conduct reflected by a single incident may provide the basis of characterization of service. Officers will receive a characterization of service on the discharge order that indicates one of the following:

(1) Honorable. An honorable discharge is a separation from the U.S. Army with honor. An officer will normally receive an Honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, giving due regard to the grade held and the capabilities of the officer concerned.

(2) General (Under Honorable Conditions). An officer will normally receive a General (Under Honorable Conditions) characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an Honorable discharge. A separation under honorable conditions will normally be appropriate when an officer— (a) Submits an unqualified resignation in lieu of elimination for acts of misconduct or moral or professional dereliction, in the interest of national security, or under circumstances involving misconduct, unless an Under Other Than Honorable Conditions separation is appropriate; or is separated based on misconduct that renders the officer unsuitable for further service, unless an Under Other Than Honorable Conditions separation is appropriate.

b. Paragraph 4-3(a), Removal from active status due to (5) non-selection for promotion after second consideration. An officer in the grade of captain who has completed his or her statutory MSO (military service obligations) will be discharged for failure to be selected for promotion after second consideration by a DA Reserve Component selection board not later than the first day of the seventh month after the month in which the President approves the report of the board which considered the officer for the second time, unless the officer is retained under the provisions of 10 USC 12646, 10 USC 12686, 10 USC 14701, or 10 USC 14703. However, an officer will be transferred to the Retired Reserve, if qualified, in lieu of discharge, unless the officer requests not to be transferred.

//NOTHING FOLLOWS//