

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 January 2024

DOCKET NUMBER: AR20230008012

APPLICANT REQUESTS: reconsideration of his previous request(s) to correct his DD Form 214 (Report of Separation from Active Duty) to show the last name as [REDACTED]
[REDACTED]

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, Report of Separation from Active Duty
- Certification of Birth
- School Record
- Marriage Certificate
- Letter from national Personnel Records Center

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Dockets Number:

- AR20150017619 on 4 October 2016
- AR20210013725 on 14 February 2022

2. The applicant states the Army stole his identity. He has enclosed his birth certificate, elementary and high school record, and marriage license to show the correct name. He wants the Army to return his identity back, together with any benefits such as housing and education funds. He also wrote on his DD Form 214 that the 25 days of lost time from under Title 10, U.S. Code, Section 972, from lost time 19 July through 12 August 1977 is untrue and is part of an "unconscionable conspiracy."

3. Review of the applicant's service records shows:

a. The applicant's record contains a legal document from the U. S. District Court for the Eastern District of Illinois, on 8 June 1976, found [REDACTED] guilty of the offense of possession of a check stolen from the mail. The adjudged a fine of \$270.00 and five

years' probation. An arrest order from the U.S. District Court for the Eastern District of Illinois, dated 23 December 1976, directed any U.S. Marshal, or any other authorized officer, to arrest [REDACTED] on the charge that he violated the conditions of his probation.

b. The applicant enlisted in the Regular Army on 5 April 1977 using the last name [REDACTED]. His DD Form 1966 (Record of Military Processing) completed in conjunction with this enlistment shows he underwent enlistment processing under the name [REDACTED]. The form indicates his name, age, and citizenship were verified with his birth certificate.

c. A DA Form 4187 (Personnel Action), 20 July 1977, under the last name [REDACTED] shows, while in training at Redstone Arsenal, his duty status was changed on 19 July 1977, from present for duty to confined by civil authorities.

d. A Memorandum for Record, 20 July 1977, shows the applicant was counseled of his rights under Article 31 of the Uniform Code of Military Justice (UCMJ). The memorandum shows he was questioned concerning possible recruiter connivance and he did not allege any recruiter connivance.

e. On 20 July 1977, the applicant's immediate commander notified the applicant of his intent to initiate actions to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Separations), Chapter 14, for fraudulent entry. In the notification, the commander stated it had been determined that he had fraudulently enlisted in the U.S. Army by concealing his true identity, [REDACTED] and his record of a civil conviction.

f. On 20 July 1977, the applicant consulted with legal counsel and was advised of the basis for the contemplated separation action; the possible effects of a discharge under conditions other than honorable conditions for fraudulent entry; and the procedures and rights that were available to him. He acknowledged he understood that if he was discharged under conditions other than honorable, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits as a Veteran under both Federal and State laws, and he could expect to encounter substantial prejudice in civilian life.

g. His record also contains a notification order from the U. S. District Court for the Eastern District of Illinois, 21 July 1977, that shows the applicant, under the name [REDACTED] had been arrested for violation of his probation and was remanded to the custody of U.S. Marshal for the district.

h. On 22 July 1977, the applicant's immediate commander, recommended the applicant's separation from service under the provisions of AR 635-200, Chapter 14. The commander recommended voidance of the applicant's enlistment contract for

concealment of conviction by civil court of a felonious offense because the applicant was absent from duty in the custody of civil authorities.

i. On 22 July 1977, the applicant's battalion commander concurred with the unit commander's recommendation and notate that the applicant's fraudulent entry was clearly within the purview of AR 635-200, paragraph 14-3 (2), and warranted voidance. Recruiter connivance has not been alleged.

j. On 29 July 1977, the applicant's brigade commander also recommended approval stating the applicant's concealed information which, if known, would have resulted in his rejection from the Army. The applicant's absence, due to being in the custody of civil authorities, met the provisions of AR 635-200, paragraph 14-4a (1)(B) to have his enlistment voided.

k. On 8 August 1977, the separation authority approved the recommended voidance and separation of Private [REDACTED] also known as Private [REDACTED] with the issuance of separation orders as so as possible. The applicant was separated on 12 August 1977.

l. The applicant's DD Form 214 shows he was released from Army Control under the provisions of AR 635-200, Chapter 14, in the grade of private/E-1, due to fraudulent enlistment with a character of service as "N/A." This DD Form 214 credited him with zero active service and listed his 25 days of lost time. This DD Form 214 shows the applicant's full name as "[REDACTED]" with an additional entry in the Remarks block that reads "Erroneously enlisted as [REDACTED]"

4. On 4 October 2016, the Board denied his request to correct his DD Form 214 to show the entry in item 1 as "[REDACTED]" and any benefits to which he may be entitled. The Board stated:

a. The applicant provides no evidence to support his claim that the U.S. Army conspired to steal his identity by forcing him to use another name since 1977. His claim that the name on his social security card was illegally changed from "R. W " to "R M " does not fall within the purview of the U.S. Army or this Board. The applicant may choose to take this issue up with the Social Security Administration.

b. The evidence contained in the applicant's official military personnel file clearly shows he knowingly and willingly concealed his true identity and conviction by a civilian court to fraudulently enlist in the RA under the name "R. W " instead of "R M "

c. The applicant's administrative separation and the completion of his DD Form 214 were accomplished in compliance with applicable regulations with no indication of procedural errors that would have jeopardized his rights.

5. On 14 February 2022, the Board reconsidered the applicant's request and again denied it. After reviewing the application, all supporting documents and the evidence found within the military record, the Board determined that relief was not warranted. The Board carefully considered applicant's contentions, military record and regulatory. As the applicant bears the burden of proving an error or injustice, the Board found the evidence presented insufficient to overcome the presumption of administrative regularity regarding that portion of the request regarding a correction to his name. Based on the preponderance of evidence available for review the Board determined the evidence presented insufficient to warrant a recommendation for relief.

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. The evidence shows the applicant released from Army Control under the provisions of AR 635-200, Chapter 14, due to fraudulent enlistment with a character of service as "N/A." The evidence shows the applicant's concealed information which, if known, would have resulted in his rejection from the Army. His chain of command determined his absence, due to being in the custody of civil authorities, met the provisions of AR 635-200, paragraph 14-4a to have his enlistment voided. This DD Form 214 credited him with zero active service. This DD Form 214 shows the applicant's full name as "██████████" with an additional entry in the Remarks block that reads "Erroneously enlisted as ██████████" The Board determined in view of his erroneous/fraudulent enlistment and given that his DD Form 214 already listed both names, no further correction is warranted since there is neither an error nor an injustice.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	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 to amend the decision of the ABCMR set forth in Docket Number AR20150017619 on 4 October 2016 and Docket Number AR20210013725 on 14 February 2022

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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. Army Regulation 635-5 (Separation Documents), in effect at the time, prescribed the separation documents that must be prepared for Soldiers on retirement, discharge, release from active duty service, or control of the Active Army. It established standardized policy for preparing and distributing the DD Form 214 and stated the entries in block 1 (Name) were to be taken from the enlisted record brief; separation approval authority documentation, if applicable; separation order; or any other document authorized for filing in the Official Military Personnel File.

2. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. An honorable discharge was 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 had met the standards of acceptable conduct and performance of duty for Army personnel: or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge was a separation from the Army under honorable conditions. When authorized it was issued to Soldiers whose military record were satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 (Separation for Misconduct) established policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions; a pattern of misconduct; commission of a serious offense; conviction by civil authorities; desertion; and absence without leave. Paragraph 14-4a(1)(B) provided the authority procedures for separation and voidance of an enlistment contract due to fraudulent entry.

d. Misconduct involving fraudulent entry is currently considered under Chapter 7 that states when evidence to support a deliberate misrepresentation, omission, or concealment of facts which might have resulted in an enlistment rejection; the unit commander will forward a memorandum through the chain of command to the separation authority with their recommendation for discharge; voidance of fraudulent entry; or retention if it is determined that fraudulent entry did occur. A recommendation will be made as to the type of discharge certificate to be awarded.

3. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records on 25 July 2018, 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 grounds. 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. 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. 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//