

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 April 2024

DOCKET NUMBER: AR20230009539

APPLICANT'S REQUEST: in effect, the issuance of a separate DD Form 214 (Certificate of Release or Discharge from Active Duty) that shows his period of honorable active service from 26 June 1978 through 19 September 1982.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Orders 216-4, issued by 261st Personnel Service Company on 19 September 1982
- DD Form 256A (Honorable Discharge Certificate – United States Army)
- DD Form 214, for the period ending 11 June 1984

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, U.S. Code (USC), 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, in effect, he is requesting a DD Form 214 for his first period of service, which was honorable. When he reenlisted on 20 September 1982, he was honorably discharged effective 19 September 1982. Although he was issued an Honorable Discharge Certificate, he was not issued a DD Form 214 for his period of honorable service. Until he applied for a discharge upgrade, he did not realize he could use his first period of service for honorable purposes.

3. On 26 June 1978, the applicant enlisted in the Regular Army for a period of 4 years. Upon completion of initial entry training, he was assigned to a unit Fort Stewart, GA. He was subsequently reassigned to a unit in Germany. On 9 September 1980, he extended his term of enlistment for an additional 6 months in order to meet the remaining service requirement for completion of an overseas tour. He was promoted to the rank/pay grade of sergeant (SGT)/E-4 on 7 October 1981.

4. Orders 216-4, issued by 261st Personnel Service Company on 19 September 1982 show the applicant was discharged on 19 September 1982, for the purpose of immediate reenlistment. The applicant reenlisted on 20 September 1982, for a 4 year period.
5. The applicant's available record is void of the specific facts and circumstances surrounding his separation under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, in lieu of trial by court-martial.
6. Orders 103-337, issued by Headquarters, 7th Infantry Division and Fort Ord, Fort Ord, CA on 25 May 1984 show the applicant was reduced from Sergeant/E-5 to private/E-1 effective 22 May 1984.
7. The applicant was discharged on 11 June 1984, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "For the Good of the Service - In Lieu of Trial by Court-Martial" with Separation Code "KFS" and Reenlistment Codes "RE-3 and 3c." His service was characterized as Under Other Than Honorable Conditions (UOTHC). He was credited with completing 5 years, 11 months, and 16 days of net active service this period.
8. Additionally, his DD Form 214 shows in Block 18 (Remarks) the entry, "IMMEDIATE REENLISTMENT THIS PERIOD: 820920" (indicating 20 September 1982). There is no entry specifying the applicant's period of honorable service (see Administrative Notes).
9. The issuance of a discharge under the provisions of Army Regulation 635-200, Chapter 10, required the applicant to have requested from the Army – voluntarily, willingly, and in writing – discharge in lieu of trial by court-martial. It is presumed that all requirements of law and regulation were met and the rights of the applicant were fully protected throughout the separation process.
10. The applicant provides a DD Form 256A which shows he was honorably discharged from the U.S. Army in the rank of SGT on 19 September 1982.
11. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his characterization of service. On 17 May 1986, he was informed the ADRB had carefully considered his military records and all other available evidence and determine that he was properly and equitably discharged. Accordingly, his request was denied.
12. The applicant petitioned the ABCMR for relief. On 3 May 2000, the applicant was informed the Board had considered his application under procedures established by the Secretary of the Army and had denied his request for relief.

13. Army Regulation 635-5 (Personnel Separations - Separation Documents), in effect at the time, prescribed the separation documents that must be prepared for Soldiers at the time of retirement, discharge, or release from active duty service or control of the Active Army. It stated, in pertinent part, a DD Form 214 would not be reissued, in part, except when it is determined that the original DD Form 214 cannot be properly corrected by issuance of a DD Form 215 (Correction of DD Form 214) or if the correction would require the issuance of more than two DD Forms 215.

14. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

#### 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 Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. The Board noted the applicant's continuous honorable service as annotated in the administrative notes of the Record of Proceedings for the correction to his DD Form 214. However, the Board determined that despite not having the complete facts and circumstances surrounding the applicant's discharge that charges were preferred against the applicant under the Uniform Code of Military Justice, punishable by a punitive discharge and that the applicant voluntarily requested a Chapter 10, in lieu of trial by court-martial. Therefore, by a preponderance of the evidence, the Board determined there was no error or injustice to the applicant's characterization of service assigned at discharge and denied relief.

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:

Except for the correction addressed in Administrative Notes below, the Board found 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.

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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.

ADMINISTRATIVE NOTES:

A review of the applicant's record shows his DD Form 214, for the period ending 11 June 1984, is missing important entries that may affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 780626 UNTIL 820919

REFERENCES:

1. Title 10, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

b. 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.

c. 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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

4. Army Regulation 635-5 (Personnel Separations – Separation Documents), in effect at the time, prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes the standardized policy for preparing and distributing the DD Form 214. It states the DD Form 214 provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

a. Paragraph 1-4b(5) of the regulation in effect at the time stated that a DD Form 214 would not be prepared for enlisted Soldiers discharged for immediate reenlistment in the Regular Army.

b. Paragraph 2-4h(18) of the regulation currently in effect states that item 18 documents the remarks that are pertinent to the proper accounting of the separating Soldier's period of service. Subparagraph (c) states that for enlisted Soldiers with more than one enlistment period during the time covered by the DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify the appropriate dates. For Soldiers who have previously reenlisted without being issued a DD Form 214 and who are later separated with any characterization of service except "honorable," enter "CONTINUOUS HONORABLE ACTIVE SERVICE FROM" (first day of service which DD Form 214 was not issued) UNTIL (date before commencement of current enlistment)." Then, enter the specific periods of reenlistments as prescribed above.

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 (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.

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 on the basis of 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//