

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 April 2024

DOCKET NUMBER: AR20230009678

APPLICANT REQUESTS:

The applicant's request for correction of his records is unclear. On his DD Form 149 (Application for Correction of Military Record), he marked all categories in block 11 including Other (Delayed Entry Program (DEP)), but only specifically addresses the inclusion of the DEP period.

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

- DD Form 149
- DD Form 4 (Enlistment/ Reenlistment Document (copy provided is unreadable)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) benefits summary
- Two certificates for post service training

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 wants his complete full term of service to include his period in the DEP, entered on his DD Form 214 for determination of eligibility for benefits.
3. On the applicant's DD Form 149, he indicates post-traumatic stress disorder (PTSD) and other mental health issues as contributing and mitigating factors in the circumstances that resulted in his separation. He also marked the block "Reprisal/Whistleblower". However, the applicant has not provided any official documentation to support a diagnosis of any mental health issues during his period of service.

4. The applicant enlisted in the U.S. Army Reserve for 8 years under the DEP on 6 November 1992. He enlisted in the Regular Army for 2 years and 16 weeks on 14 July 1993. He completed training with the award of the military occupational specialty 11C (Indirect Fire Infantryman). The highest grade he held in the Regular Army was E-3.

5. The applicant was honorably released from active duty in the grade of E-3 on 6 November 1995 under Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 4 for completion of required active service. The DD Form 214 issued at this time shows:

- He completed 2 years, 3 months, and 23 days of active service
- No prior inactive service
- At block 18, a period of DEP from 6 November 1992 through 13 July 1993

6. The applicant served honorably in an active status in the California Army National Guard from 7 November 1995 through 5 November 2000 in the grade of E-4.

7. The applicant provided a copy of a VA benefits summary showing his service from 14 July 1993 to 6 November 1995; award of a 40 percent disability evaluation, the diagnosis of the condition or conditions is not shown; and two VA certificates of training.

8. The applicant has not provided any evidence or argument to support review of all of the items marked in block 11 on his application except possibly a disability determination, based on his VA benefits award, and the recording of his DEP time.

9. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

10. MEDICAL REVIEW:

a. Request: The applicant has an honorable discharge but states he wants his complete full term of service to include his period in the DEP, entered on his DD Form 214 for determination of eligibility for benefits. This opine will not address missing periods of service, this will be deferred to the Board. The focus of this opine will narrowly address his asserted behavioral health conditions.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a brief summary of information pertinent to this advisory:

- Applicant enlisted in the U.S. Army Reserve for 8 years under the DEP on 6 November 1992. He enlisted in the Regular Army on 14 July 1993.

- Applicant was honorably released from active duty in the grade of E-3 on 6 November 1995 under Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 4 for completion of required active service. The DD Form 214 shows a separation code of MBK and a Reentry Code of 1.
- Applicant served honorably in an active status in the California Army National Guard from 7 November 1995 through 5 November 2000 in the grade of E-4.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, DD Form 214, ABCMR Record of Proceedings (ROP), VA benefits summary, and documents from his service record and separation packet. The VA electronic medical record and DoD health record available for review through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. On the applicant's DD Form 149, he indicates post-traumatic stress disorder (PTSD) and other mental health issues as contributing and mitigating factors in the circumstances that resulted in his separation. He also marked the block "Reprisal/Whistleblower". However, the applicant has not provided any medical documentation to support a diagnosis of any mental health issues during his period of service.

e. No active-duty electronic medical records were available for review due to the period of service. The VA electronic record indicates the applicant is currently 40% service connected, including 10% for Tinnitus and 30% for Asthma. The applicant is not service connected for any behavioral health diagnosis. And, although he selected all mental health categories on his DD Form 149 application, the VA electronic record evidences treatment related to polysubstance abuse with his most recent psychiatry encounter, on 8 January 2024, diagnosing him with Alcohol Use Disorder, Meth Use Disorder, and Cannabis Use Disorder.

f. Based on all available information, it is the opinion of this Agency Behavioral Health Advisor that there is insufficient evidence to support a referral to the IDES process at this time since the applicant is not service connected for any BH condition. Even if the applicant had a service connection based on a behavioral health diagnosis, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating would not imply failure to meet Army retention standards at the time of service. Even if the applicant had received a subsequent diagnosis through the VA, it would not be indicative of an injustice at the time of service. Furthermore, the applicant successfully completed both his active duty and national guard obligations. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a

referral to the IDES process. In summary, his separation process appears proper, equitable and free of error, and insufficient new evidence has been provided to determine otherwise.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. The Board found no evidence of errors in the documentation of the applicant's service time. His DD Form 214 accurately documents his active duty service as well as his period of service in the DEP, and his National Guard Bureau Form 22 (Report of Separation and Record of Service) accurately documents his service in the California Army National Guard. The Board further found no evidence indicating the presence of an error or injustice in his release from active duty in the Regular Army or his discharge from the Army National Guard. Based on a preponderance of the evidence, the Board found no basis for any corrections to the applicant's service records.

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 for correction of the records of the individual concerned.

8/18/2024

X [REDACTED]

CHAIRPERSON
[REDACTED]

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. Title 10, USC, section 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
4. Army Regulation 635-5 (Separation Documents) prescribes the separation documents that must be prepared for Soldiers on retirement, discharge, release from active duty service, or control of the Active Army. It establishes standardized policy for preparing and distributing the DD Form 214. For the entry ae block 12 (RECORD OF SERVICE):

- item 12a (Date Entered Active Duty This Period), enter the beginning date of the continuous period of active duty for issuance of this DD Form 214,
- item 12b (Separation Date This Period), enter the soldier's transition date
- item 12c (Net Active Service This Period), the amount of service this period, computed by subtracting item 12a from 12b
- item 12e (Total Prior Inactive Service), enter the total amount of prior inactive service, less lost time, if any. DEP time that began on or after 1 January 1985 is not creditable service for pay purposes and will not be entered in this block. However, it is creditable service for completing the statutory Mandatory Service Obligation, and will be entered in block 18.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and 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. BCM/NRs 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.

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, 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.

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//