

IN THE CASE OF: ██████████

BOARD DATE: 24 April 2024

DOCKET NUMBER: AR20230010179

APPLICANT REQUESTS: the narrative reason for his separation to be changed from "Pattern of Misconduct" to a presumably more favorable reason.

APPLICANT'S SUPPORTING DOCUMENT 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 (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, the Board granted him an upgrade of his characterization of service from "Under Honorable Conditions (General)" to "Honorable." He is now requesting a change of the narrative reason for his discharge.
3. The applicant enlisted in the U.S. Army Reserve for a period of 8 years on 23 March 2007. On 4 June 2008, he was honorably discharged from the USAR for the purpose of immediate reenlistment in the Regular Army on 5 June 2008.
4. The applicant served in Iraq from 3 October 2009 to 27 September 2010.
5. He reenlisted in the Regular Army on 15 July 2011 for a period of 4 years in the rank/pay grade of sergeant (SGT)/E-5.
6. The applicant's military service record is void of the complete facts and circumstances regarding his administrative separation.
7. A DA Form 4856 (Developmental Counseling Form) shows the applicant was counseled by his First Sergeant on 20 July 2012 for failing to report to accountability formation that morning. It was noted that this was the third time the applicant had failed

to be at formation in the relatively short time he had been in the unit. He was advised that this was unacceptable and would not be tolerated again. He was further advised that he was being recommended for disciplinary action under the Uniform Code of Military Justice (UCMJ). He was advised that he was being recommended for UCMJ action.

8. On 30 July 2012, an administrative flag was imposed upon the applicant to prevent him from receiving any favorable personnel actions because he was pending adverse action.

9. On 28 August 2012, the applicant accepted field grade punishment under the provisions of Article 15, UCMJ for failing to go at the time prescribed to his appointed place of duty on 20 and 30 July 2012. His punishment consisted of reduction to the rank/pay grade of specialist/E-4, suspended, to be automatically remitted if not vacated before 26 November 2012; forfeiture of \$1,133 pay; and an oral reprimand.

10. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was involuntarily discharged from active duty in the rank/grade of SGT/E-5, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Paragraph 14-12b, due to a Pattern of Misconduct on 1 April 2013. He was assigned Separation Program Designator Code "JKA" and Reentry Eligibility Code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 4 years, 9 months, and 27 days of net active service. He was credited with continuous honorable active service from 5 June 2008 to 14 July 2011.

11. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his service characterization. On 7 February 2018, the applicant was informed that after careful review the ADRB had determine he was properly and equitably discharged and denied his request.

12. The applicant petitioned the ABCMR for an upgrade of his service characterization. On 21 September 2020, the applicant was informed the ABCMR granted his request for an upgrade of his service characterization. As a result, the applicant's original DD Form 214 was voided, and he was issued a revised DD Form 214 showing his characterization of service as "Honorable." The narrative reason for his separation was unchanged.

13. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

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 and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence of in-service mitigating factors that warrants amending the applicant's narrative reason for separation to a presumably more favorable reason. Evidence of record shows, at the time of separation, documentation supports the narrative reason for separation properly identified on the DD Form 214. As such, the Board determined under liberal consideration changes to the applicant's narrative reason are not warranted. Therefore, relief is denied.

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.

5/6/2024

X 

CHAIRPERSON


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, 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.

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of

misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

5. Army Regulation 635-5-1 (Separation Program Designator Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code "JKA" is an appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 14, by reason of misconduct.

6. 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, 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//