

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 May 2024

DOCKET NUMBER: AR20230010189

APPLICANT REQUESTS: correction of his military records as follows:

- reconsideration of his previous request for an upgrade of his general, under honorable conditions discharge and change corresponding codes
- list his combat service in Bosnia as well as his awards and decorations

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

- DD Form 149 (Application for Correction of Military Record)
- 1999 Honorable Discharge Certificate
- Order 2000-12, promotion to sergeant (SGT)/E-5, 26 August 1992
- Order 118-301, promotion to staff sergeant (SSG)/E-6, 28 April 1999
- Order 20-10, Army Achievement Medal (2nd Oak Leaf Cluster)
- Order 176-108, Army Good Conduct Medal (3rd Award)
- Memorandum For Record, Subject: External Air Transportation (Sling Load) Operations Course, 7 October 1994

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 Docket Number AR2002075555, on 26 September 2002

2. The applicant states the record should be as accurate as possible.

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

a. Having had prior service, he enlisted in the Regular Army on 6 May 1988. He held military occupational specialty 19K, M-1 Tank Crewman. He served through multiple reenlistments, in a variety of assignments, including Germany. He was promoted to SGT/E-5 on 1 September 1992 and to SSG/E-6 on 1 May 1999.

b. On 16 June 1999, he participated in a unit urinalysis and his urine tested positive for THC. As a result, on 10 August 1999, he accepted nonjudicial punishment under

Article 15, Uniform Code of Military Justice, for wrongfully using marijuana. His punishment consisted of reduction to SGT/E-5, forfeiture of pay, and restriction and extra duty.

c. On 20 August 1999, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him in accordance with Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), paragraph 14-12c, for misconduct - commission of a serious offense, wrongfully using illegal drugs (marijuana). The immediate commander advised him of his rights.

d. The applicant acknowledged receipt of the commander's intent to separate him and subsequently consulted with legal counsel. He was advised of the basis for the contemplated separation for misconduct, the type of discharge he could receive and its effect on further enlistment or reenlistment, the possible effects of this discharge, and of the procedures/rights that were available to him. He acknowledged he understood he was entitled to an administrative separation board because he had over 6 years of total service. He waived his right to an administrative separation board and/or appearance before such board. He also elected not to submit a statement in his own behalf.

e. Subsequent to his acknowledgement, the applicant's immediate commander formally initiated separation action against him in accordance with AR 635-200, paragraph 14-12c, for misconduct. He indicated the applicant has demonstrated by his actions that he will not become a quality soldier desired by the Army.

f. On 13 September 1999, the separation authority approved the applicant's discharge under the provisions of AR 635-200, chapter 14, by reason of misconduct - commission of a serious offense and directed his service be characterized as under other than honorable conditions. On 6 October 1999, the applicant was discharged accordingly.

g. The DD Form 214 (Certificate of Release or Discharge from Active Duty) he was initially issued confirms he was discharged under the provisions of AR 635-200, chapter 14, by reason of misconduct with a character of service of under honorable conditions (Separation Code JKK and Reentry Codes 4). This form further confirms he completed 11 years, 5 months, and 1 days of active service during this period of service. His DD Form 214 shows in:

- (1) Block 4a (Grade, Rate or Rank) and 4b (Pay Grade) SGT/E-5
- (2) Block 12f (Foreign Service) 8 years 6 months and 25 days
- (3) Block 12h (Effective Date of Pay Grade): 1999-08-11

(4) Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized):

- Army Achievement Medal (5th Award)
- Army Good Conduct Medal (4th Award)
- National Defense Service Medal
- NCO Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon
- NATO Medal
- Expert Marksmanship Qualification Badge with Rifle and Pistol Bars
- Driver and Mechanic Badge with Driver T Bar

(5) Block 14 (Military Education) listed his military courses, including the External Air Transportation (Sling Load) Operations Course, 7 October 1994

(6) Block 18 (Remarks) listed his reenlistments and continuous honorable service as well as completion of his first term of service. The Remarks block does not list and deployments.

4. On 8 January 1987, following his 11 July 2000 application to the Army Discharge Review Board (ADRB), the ADRB voted to upgrade his character of service from general, under honorable conditions to honorable. As a result, his DD Form 214 was voided, and he was issued a new DD Form 214 on 6 October 2000 reflective of his honorable character of service (Separation Code JKK, Reentry Code 4).

5. On 26 September 2002, the ABCMR considered his petition to change his separation program designator code (SPD) so he can receive separation pay and his reentry (RE) code be changed so he can reenlist. Considering all the evidence, allegations, and information presented by the applicant, together with the evidence of record, applicable law and regulations, the Board concluded:

a. In order to justify correction of a military record the applicant must show to the satisfaction of the Board, or it must otherwise satisfactorily appear, that the record is in error or unjust. The applicant has failed to submit evidence that would satisfy this requirement.

b. It is not clear what the applicant means when he states that he accepted the discharge on the grounds that he would receive at least some compensation. As an involuntary discharge, he did not have a choice in the matter (unless he is referring to the fact that he waived consideration of his case by a board of officers). Nevertheless, he had access to counsel and freely made that decision. It is also noted that he elected not to submit a statement on his own behalf.

c. It is noted that the applicant requested a compassionate discharge; however, when it was disapproved, he had the option to request a hardship discharge. It does not appear that he did so. It is not clear how having his compassionate reassignment disapproved could have formed a "basis" for using illegal drugs. In any case, changing his discharge to hardship would not give him the relief he requests. A hardship discharge is a voluntary discharge; soldiers voluntarily discharged are not eligible for separation pay, either.

d. Regarding the RE code, there is no evidence of Government error in this case. The applicant was given the correct RE code of 4 at the time based upon his reason for separation. Current regulatory guidance is that the applicant would have been given an RE code of 3 rather than 4 based upon the reason for his separation.

6. On 8 March 2024, an official at the Defense Finance and Accounting Service indicated that their office reviewed the member's pay records from 1991-1994 and only saw the member was stationed in Germany. The pay records do not reflect any foreign service in Bosnia. If the time frame is outside that period, we can check other dates if the member can be more specific on the time frame they were in Bosnia.

7. By regulation, Soldiers are subject to separation under the provisions of paragraph 14-12c of AR 635-200 for a commission of a serious offense. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

BOARD DISCUSSION:

1. 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, available military records, the Board determined the applicant's record is absent sufficient evidence showing any tours in Bosnia. Evidence of record shows, at the time of separation, documentation supports the foreign service properly identified on the DD Form 214. The Board agreed, the burden of proof rests with the applicant to provide evidence of a clear and convincing nature with documentation to support the applicant's contentions showing combat service in Bosnia as well any awards and decorations.

2. Furthermore, the Board determined the applicant was discharged for misconduct and was provided an under honorable conditions (General) characterization of service. The Board agreed there is insufficient evidence of in-service mitigation to overcome the misconduct of drug use. The Board determined the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an honorable discharge. Therefore, the Board found reversal of the previous Board determination is without merit 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:

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 to amend the decision of the ABCMR set forth in Docket Number AR2002075555, on 26 September 2002.

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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 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD code to be entered on the DD Form 214. It identifies SPD code JKK as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200 (Personnel Separation), chapter 14-12c, by reason of misconduct (drugs).
3. The SPD/RE Code Cross Reference Table provides instructions for determining the RE code for Active Army and Reserve Component Soldiers. The SPD/RE Cross Reference Table in effect at the time of the applicant's separation established the RE code of 4 as the proper RE code to assign to enlisted Soldiers separated discharged under the provisions of Army Regulation 635-200, chapter 14-12c, by reason of misconduct (drugs) with an SPD code of JKK.
4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.
 - RE-1 applies to Soldiers completing their terms of active service who are considered qualified for enlistment if all other criteria are met
 - RE-3 applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable – they are ineligible unless a waiver is granted
 - RE-4 applies to persons not qualified for continued Army service and the disqualification is nonwaivable.
5. Army Regulation 635-5 (Separation Documents) establishes the standardized policy for preparing and distributing the DD Form 214. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service. Chapter 2 contains guidance on the preparation of the DD Form 214. It states for item 12f, enter the total amount of foreign service completed during the period covered by the DD Form 214. For an active duty Soldier deployed with his or her unit during their continuous period of active service, the statement "Service in (Country

Deployed) FROM (inclusive dates for example, YYYYMMDD-YYYYMMDD)" will be entered in item 18.

//NOTHING FOLLOWS//