

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 June 2024

DOCKET NUMBER: AR20230010238

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Two letters of support
- DA Form 4187 (Personnel Action)
- Two DD Forms 370 (Request for Reference)

FACTS:

1. The applicant states his discharge from the U.S. Army Reserve (USAR) was unfair and he received no notification prior to his separation.

a. The applicant was one of the Soldiers under Staff Sergeant (SSG) M__ who were forced out during Sergeant First Class (SFC) Ri__'s time at the unit; the applicant missed days due to his divorce and he asked his command to excuse his absences.

b. The applicant affirms he has been trying for years to reenlist following his Army separation and he has gone to multiple recruiters with the hope of reentering military service. He hopes that now, with the statements he is providing from members of his former unit, the Board will grant him relief.

2. The applicant provides a DA Form 4187 showing his January 2018 promotion to private first class (PFC)/E-3, along with the following documents:

a. Two letters of support:

(1) SSG M__ states from 2017 to 2019, SFC Ri__ was assigned as an Active Guard/Reserve (AGR) to the quartermaster unit in which both he and the applicant were assigned; SFC Ri__ ran the unit and SSG M__ observed several questionable

occurrences. In addition, SFC Ri__ made decisions that appeared to be racially motivated and to his own benefit; the result was low unit morale.

(i) The only incident SSG M__ can personally attest to occurred at his civilian job; SSG M__ is a county deputy sheriff and, on one occasion, a fellow deputy who is also a chaplain approached him and asked if he was still in the USAR. When SSG M__ answered in the affirmative, the deputy disclosed SFC Ca__'s wife had told him she was going through a divorce because SFC Ri__ had slept with her.

(ii) After this, SSG M__ began to note that SFC Ri__ was spending a lot of time with various females in the unit, and he "kind of confirmed some rumors that were going around about him (SFC Ri__) sleeping with the commander." SFC Ri__ knew how to get people "kicked out" and continually abused his power for his personal gain. "I believe several Soldiers were lost during his assignment.. I personally lost two Soldiers in the DFAC due to failing PT test (Army Physical Fitness Test) and missed days from drill. However, if the Soldier was in good graces with (SFC Ri__), they would have been excused."

(iii) SSG M__ acknowledges that his claims are "extremely difficult to prove and surely would be denied by SFC Ri__. He believes several Soldiers) have contacted IG (inspector general), and these cases were unfounded."

(2) SFC S__ P. W__ states he first met SFC Ri__ in 2012 while assigned to a quartermaster company in Michigan; SFC Ri__ was one of the AGR staff.

(i) SFC W__ notes that, at first, SFC Ri__ seemed like a "good guy," but SFC W__ soon noticed how SFC Ri__ tended to focus most of his attention on the female Soldiers in the unit. While at the quartermaster unit, SFC Ri__ never really did his job, and he did not lend a hand to anyone other than females.

(ii) A few years later, SFC W__ was now an AGR Soldier himself and assigned to a quartermaster unit in Texas (TX); as of 24 June 2019, SFC Ri__ was also assigned there and, during a meeting with the ARA, SFC W__ learned SFC Ri__ was absent that week because he was attending training. (The Army Reserve Ambassador (ARA) Program is one of the Army Reserve's key outreach and engagement programs. ARAs are appointed by the Chief of Army Reserve (CAR) to a 3-year term to serve as special government employees who voluntarily represent the CAR without salary, wage, or benefits. All ARA's hold a Department of Army Protocol Precedence List (VIP Code 5) a major general (two star) equivalent).

(iii) Later, after his meeting with the ARA, SFC W__ saw SFC Ri__ and asked why he was not at training; SFC Ri__ replied he had canceled the training. Nonetheless, SFC Ri__ remained absent that entire week. The following week, SFC

W__ questioned SFC Ri__ as to why he had been absent despite having canceled the training; SFC Ri__ said, "I do what I want."

(IV) SFC W__ subsequently met with SFC Ca__ and asked him how he liked working with SFC Ri__; SFC Ca__ responded, "I don't...I got a divorce because of him. He slept with my wife, so I don't talk to him." SFC W__ also learned that a female UA (Unit Administrator) had complained to the company commander about SFC Ri__'s unwanted advances, and she told the commander that if he did not transfer her, she would file a SHARP (Sexual Harassment/Assault Prevention) complaint; the commander transferred the UA. The company commander told SFC W__ that SFC Ri__ was "bad news."

(V) While on his first USR with the unit, they traveled to San Marcos, TX; at the hotel, the attendant disclosed he had been a member of SFC W__'s unit in the past but left because of SFC Ri__. The attendant claimed SFC Ri__ told him, "We need to stick together because this is a white man's game and...we need to (F) them over as much as possible, I'm only here to help our people (The Black People) (F) the whites."

(VI) SFC W__ added that SFC Ri__ and the unit supply sergeant had sexual relations while at the work place and during duty hours; neither ever had anything nice to say about white people, and they disregarded the unit commander by failing to attend field training exercises. Both would try and pass off their work to everyone else.

b. Two DD Forms 370:

(1) Sergeant (SGT) J__ S. A__ states he has known the applicant for a while through a mutual friend; from his observation, the applicant is a hardworking individual with great leadership ability and confidence.

(2) SGT D__ A. F__ states the applicant is more than qualified to join the Armed Forces. The applicant is reliable, trustworthy and can adapt to and overcome any obstacles in his path. In addition, the applicant completes every assignment accurately and in a timely manner, and he always finds a way to figure out complicated tasks. When asked for help, he always stops whatever he is doing to offer assistance. Although the applicant has been out of military service for the past 3 years, he nonetheless lives by Army values and carries himself with military bearing.

3. A review of the applicant's service record shows:

a. On 16 December 2016, following an entry-level separation from the U.S. Marine Corps (USMC), the applicant enlisted into the USAR.

b. The applicant's separation packet is unavailable for review; however, the applicant's service record includes his separation orders, which show that, effective 17 April 2018, the USAR discharged the applicant under other than honorable conditions. The order cites Army Regulation (AR) 135-178 (Army National Guard and Reserve – Enlisted Administrative Separations) as its authority.

c. On 19 August 2021, the applicant petitioned the Army Discharge Review Board (ADRB) requesting an upgrade to an honorable characterization of service and a change in the reason for separation. On 23 March 2022, the ADRB conducted a records review and determined the applicant's separation was proper and equitable and did not require a change in character of service or reason for separation.

d. On 17 June 2022, the applicant requested a personal appearance before the ADRB to present his case for an upgraded characterization of service and a change in separation code (SPD) and reentry (RE) code. On 18 July 2022, the ADRB conducted a hearing in which the applicant participated via telephone. After reviewing the applicant's service records and the documents he submitted as evidence and evaluating the testimony given by the applicant and a witness, the ADRB voted to deny relief.

4. By regulation, an applicant is not entitled to a hearing before the Board; however, a panel of the Board or by the Director of ABCMR may authorize a request for a hearing.

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's conduct and the reason for separation. The applicant was separated by the U.S. Army Reserve (USAR) with an under other than honorable conditions characterization of service. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant's admission for being an unsatisfactory participant in the USAR. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

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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. AR 135-178, in effect at the time, prescribed policies and procedures for the administrative separation of ARNG and USAR Soldiers.

a. Paragraph 2-9 (Characterization of Service).

(1) Honorable. An honorable characterization was appropriate when the quality of the Soldier'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.

(a) An honorable characterization could only be awarded a Soldier upon completion of their service obligation, or where required under specific reasons for separation.

(b) When a Soldier was discharged before expiration of the service obligation for a reason for which an honorable characterization was discretionary, the following considerations applied:

- Where there were infractions of discipline, the extent thereof was to be considered as well as the seriousness of the offense(s)
- A Soldier would not necessarily be denied an honorable characterization solely by reason of a specific number of convictions by court-martial or nonjudicial punishments
- Conviction by a general court-martial or by more than one special court-martial did not automatically rule out the possibility of awarding an honorable characterization of service
- An honorable characterization could be awarded when disqualifying entries in the Soldier's military record were outweighed by subsequent honorable and faithful service over a greater period of time during the current term of service
- It was the pattern of behavior and not an isolated instance that was to be considered the governing factor in determining the character of service
- Unless otherwise ineligible, a Soldier could receive an honorable characterization of service if they had, during their current enlistment, or any extension thereof, received a personal decoration

(2) General (under honorable conditions). If a Soldier's service was honest and faithful, it was appropriate to characterize that service as general, under honorable conditions.

(a) Characterization of service as general (under honorable conditions) was warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

(b) When authorized, a characterization of under honorable conditions was awarded to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(3) Under other than honorable conditions. Service could be characterized as under other than honorable conditions only when discharge was for misconduct, fraudulent entry, unsatisfactory participation, or security reasons.

(a) An under other than honorable conditions separation was to be directed only by a general officer in command who had a judge advocate or legal advisor available.

(b) No Soldier could be discharged in accordance with this regulation, with service characterized as under other than honorable conditions, unless they were afforded the right to present their case before an administrative separation board. The Soldier was to be afforded the advice and assistance of counsel.

(c) When a Soldier was to be discharged under other than honorable conditions, the separation authority was to direct an immediate reduction to private (PV1)/E-1, in accordance with AR 600-8-19 (Enlisted Promotions and Reductions).

b. Chapter 3 (Guidelines for Separation), Section III (Separation Using the Administrative Board Procedure).

(1) When the administrative board procedure was required, the Soldier was to be notified in writing of the following:

- The basis of the proposed separation
- Whether the proposed separation could result in a discharge from the Army
- The least favorable characterization or description of service authorized for the proposed separation
- The Soldier's right to consult with military legal counsel. The Soldier may also consult with civilian counsel retained at the Soldier's own expense
- The right to obtain copies of documents that will be sent to the separation authority supporting the basis of the proposed separation
- The Soldier's right to request a hearing before an administrative board
- The Soldier's right to present written statements instead of the administrative board proceedings
- The Soldier's right to representation at the administrative board by military counsel

- The Soldier's right to representation at the administrative board by civilian counsel at the Soldier's own expense
- The Soldier's right to submit a conditional waiver of the right to a hearing before an administrative board
- The right to waive the foregoing rights

(2) Reasonable efforts were to be made to furnish copies of the notification memorandum to the Soldier through personal contact by a representative of the command. In such a case, a written acknowledgment of receipt of the notification will be obtained. If the Soldier cannot be contacted or refuses to acknowledge receipt of the notification, the notification memorandum will be sent by registered or certified mail, return receipt requested, to the most recent address furnished by the Soldier as an address for receipt or forwarding of official mail.

(3) The Soldier will be provided a reasonable period of time (not fewer than 30 calendar days) to respond by endorsement to the notification memorandum. If the notification memorandum was mailed in accordance with this regulation, and the Soldier fails to acknowledge receipt or to submit a reply by endorsement within 30 calendar days, that fact will constitute a waiver of rights.

c. Chapter 12 (Unsatisfactory Participation in the Ready Reserve).

(1) A Soldier was subject to discharge for unsatisfactory participation when it was determined that the Soldier was unqualified for further military service because he/she was an unsatisfactory participant, as defined in AR 135-91 (Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Provisions).

(2) Additionally, the unit had to have attempted to have the Soldier respond or comply with orders or correspondence; the unit sent a notice via certified mail and the mail was refused or otherwise undeliverable; and the Soldier failed to provide the command with changes in address and reasonable efforts to contact the Soldier failed.

(3) Characterization of service normally given was under other than honorable conditions, but separation authorities could also grant a general discharge under honorable conditions.

2. AR 135-91, currently in effect, defines service obligations for Reserve Component personnel.

a. Chapter 3 (Participation Requirements). Troop Program Unit (TPU) Soldiers are required to participate in at least 48 scheduled inactive duty training (IDT) periods, and no less than 14 days, exclusive of travel time, of annual training (AT).

b. Chapter 4 (Absences).

(1) The unit commander or acting commander is authorized to excuse absences and authorize equivalent training (ET). This authority will not be further delegated. Absence from scheduled IDT periods, training, or AT may be excused. Such absences may be excused when sickness, injury, or some other circumstance beyond the Soldier's control caused the absence. Soldiers may be required to provide documentation to validate the reason for their absence.

(2) Soldiers will be charged with unsatisfactory participation when, without proper authority, they:

- Accrue in any 12-month period a total of nine or more unexcused absences from scheduled IDT periods
- Fail to obtain a unit of assignment during an authorized absence
- Fail to attend or complete AT

3. AR 600-8-19, in effect at the time, stated when a separation authority determined a Soldier was to be discharged from the Service under other than honorable conditions, the Soldier was to be reduced to the lowest enlisted grade. Board action was not required for this reduction.

4. AR 601-210 (Regular Army and Reserve Components Enlistment Program), in effect at the time, prescribed policies and procedures for the reenlistment of current and former Soldiers.

a. Table 3-1 (U.S. Army Reentry Eligibility (RE) Codes) showed the following:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for immediate reenlistment unless waiver consideration is permissible and is granted
- RE-4 – Not eligible for reenlistment. Nonwaivable disqualification

b. Paragraph 4-13 (Prior Military Service) stated, after a 6-month waiting period, an enlistment waiver could be submitted for any applicant who was separated or discharged for unsatisfactory participation.

5. AR 15-185 (ABCMR), currently in effect, states:

a. The ABCMR decides cases on the evidence of record; it is not an investigative body.

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence must be sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

b. An applicant is not entitled to a hearing before the Board; however, a panel of the Board or by the Director of ABCMR may authorize a request for a hearing.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs 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//