

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 April 2024

DOCKET NUMBER: AR20230010474

APPLICANT REQUESTS: correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) ending on 15 December 1971, to show:

- his requested name instead of his contested name
- an upgrade of his under honorable conditions (general) characterization of service

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

- DD Form 149 (Application for Correction of Military Record)
- New York State Identification Card
- Social Security Card
- DD Form 214

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, in effect, he is requesting an upgrade of his characterization of service so he may apply for a Department of Veterans Affairs (VA) loan. Additionally, he states, his first and middle names were transposed on his DD Form 214; He never noticed his name being incorrect until the day he decided to submit his application to the Army Board for Correction of Military Records, on 22 June 2022. He now also requests correction of his DD Form 214 to correctly show his name, so in the event of his passing, his headstone will be correct.
3. The Board will not consider his request to amend his name, as there is sufficient evidence to justify administratively correcting his DD Form 214 to reflect his requested name without action by the Board.

4. The applicant enlisted in the Regular Army on 31 August 1970, for 3 years.
5. His record contains a series of (4) four DA Forms 2627-1 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)); all of which reflect his requested name and show he accepted nonjudicial punishment (NJP) on the following dates for the following offenses:
  - a. He accepted NJP on 3 June 1971 for being absent from his unit from 31 May to 1 June 1971. His punishment consisted of restriction and extra duty for 7 days and a suspended reduction to the pay grade of private (PVT)/ E2. He did not appeal.
  - b. He accepted NJP on 10 August 1971 for failure to report to his prescribed place of duty on 9 August 1971. His punishment consisted of his reduction to the pay grade of PVT/E2. He did not appeal.
  - c. He accepted NJP on 29 September 1971 for being absent from his unit from 23 to 25 September 1971. His punishment consisted of forfeitures of pay of \$34.00 for one month, restriction, and extra duty for 14 days. He did not appeal.
  - d. He accepted NJP on 5 November 1971 for being absent from his unit from 2 to 4 November 1971. His punishment consisted of forfeitures of pay of \$70.00 for two months, restriction and extra duty for 30 days. He did not appeal.
6. On 15 November 1971, his commanding officer recommended that he be required to appear before a board of officers convened under provisions of Army Regulation 635-212 (Personnel Separations Discharge Unfitness and Unsuitability) for the purpose of determining whether he should be discharged before the expiration of his term of service. A recommendation for a general discharge was based, in effect, on the reasons stated below:
  - 2 June 1971 - for going AWOL (Absent Without Leave)
  - 15 July 1971 - on his job poor performance
  - 30 July 1971 - for charging of long-distance phone calls on the mess hall phones
  - 9 August 1971 - for reporting late for work
  - 1 September 1971 - on his poor job performance
  - 27 September 1971 - on his poor job performance
  - 20 October 1971 - for a telephone call charged to mess hall phone

7. On 15 November 1971, his commanding officer advised him that he was recommending elimination from the military service under the provisions of Army Regulation 635-212 for unfitness. He was further advised of his rights; he acknowledged receipt and retained a copy of his rights as follows:

- right to present his case before a board of officers
- right to submit a statement on his behalf
- right to be represented by counsel
- right to waive the above in writing

8. On 17 November 1971, his battalion commander after personally interviewing him and reviewing his records recommended that the applicant be discharged and be issued a general discharge.

9. On 23 November 1971, his brigade commander recommended that he be discharged for unfitness under the provisions of Army Regulation 635-212 and issued a general discharge.

10. On 3 December 1971, his commanding general directed his discharge under the provisions of Army Regulation 635-212 with a general discharge.

11. His DA Form 20 (Enlisted Qualification Record) shows:

- item 33 (Appointments and Reductions): reduction to PV2/E2 on 10 August 1971
- item 44 (Time Lost): 31 May 1971 (one day), 23-24 September 1971 (two days) and 2-3 November 1971 (two days)

12. His DD Form 214 ending on 15 December 1971, shows he completed 1 year, 3 months, and 10 days of net service during this period. He was discharged under the provisions of Army Regulation 635-212 with an under honorable conditions (general) character of service, a separation program number (SPN) of 28B (Unfitness, frequent involvement in incidents of a discreditable nature with civil or military authorities), and an RE (reenlistment code) of 4. He had a total of five days of lost time during this period.

#### BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.

2. The applicant's record reflects a long history of misconduct, which includes a long history of negative counseling, 4 instances of NJP under the provisions of Article 15, UCMJ, and at least 3 instances of AWOL. Based upon the applicant's history of indiscipline and his receipt of an under honorable conditions (general) character of service, his commander and the separation authority have already applied liberal consideration.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board concurs with the corrections addressed in Administrative Note(s) below, but 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 NOTE(S): administratively correct his DD Form 214 (Armed Forces of the United States Report of Transfer of Discharge) ending 15 December 1971, to show his requested name as reflected on his DA Forms 2627-1 (Record of Proceedings Under Article 15, UCMJ).

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 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
  - a. Chapter 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 3-7b, provides that 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. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.
3. Army Regulation 635-212 (Personnel Separations Discharge Unfitness and Unsuitability) provides that an individual separated by reason of unfitness will be furnished an undesirable discharge certificate except that an honorable or general discharge certificate may be awarded if the individual being discharged has been awarded a personal decoration or if warranted by the particular circumstances in the case.
4. Army Regulation 15-185 (Army Board for Correction of Military Records) 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
5. Army Regulation 635-8 (Separation Processing and Documents). The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service.

6. 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 persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

//NOTHING FOLLOWS//