

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 September 2024

DOCKET NUMBER: AR20230011059

APPLICANT REQUESTS: removal from his Army Military Human Resource Record (AMHRR) of:

- Headquarters, 99th Regional Support Command, Orders 15-180-00047, dated 29 June 2015 (Discharge from the U.S. Army Reserve USAR))
- Orders 15-183-0046, dated 2 July 2015 (Revocation of Discharge Orders)

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- 377th Chemical Company Memorandum (Acknowledgment, Election and Waiver of Rights – Separation under Army Regulation 135-178 (Army National Guard and Reserve – Enlisted Administrative Separations), Chapter (should read Paragraph) 12-1d, Separation for Abuse of Illegal Drugs, (Applicant)), 5 September 2012
- 154th Legal Support Organization Trial Defense Service Email (Reply: Request for Counsel (Applicant)), 12 September 2012
- Headquarters, 99th Regional Support Command, Orders 15-180-00047, 29 June 2015
- Headquarters, 99th Regional Support Command, Orders 15-183-0046, 2 July 2015
- Automated Record Brief, 5 July 2023

FACTS:

1. The applicant states an administrative separation board was initiated against him in 2012 for a positive drug test. He requested a hearing before a board and was eventually told the separation action was dropped due to evidentiary issues. Headquarters, 99th Regional Support Command, Orders 15-180-00047, 29 June 2015, for his discharge under other than honorable conditions (UOTHC) were added to his AMHRR in the interactive Personnel Electronic Records Management System. Subsequently, Headquarters, 99th Regional Support Command, Orders 15-183-0046, 2 July 2015, revoked Orders 15-180-00047.

a. The separation and revocation orders did not become an issue until 2023 when he applied for Department of Veterans Affairs (VA) educational benefits. The VA denied him educational benefits because the records the VA retrieved from the Defense Manpower Data Center showed his UOTHC separation, which never occurred. He was never separated from the service, yet these orders were added to his AMHRR 3 years later.

b. Since that incident, has been promoted twice, was selected for a U.S. Army Reserve (USAR) Active Guard Reserve (AGR) position, and reclassified into military occupational specialty 27D (Paralegal Specialist). No one, including the U.S. Army Human Resources Command staff, can find a copy of his administrative separation packet. His trial defense service attorney is no longer in the military and the Office of the Staff Judge Advocate's duty to maintain records does not go back to 2012 or 2015.

2. He enlisted in the USAR on 26 July 2010.

3. He provided the 377th Chemical Company memorandum (Acknowledgment, Election and Waiver of Rights – Separation under Army Regulation 135-178, Paragraph 12-1d, Separation for Abuse of Illegal Drugs, (Applicant)), 5 September 2012, showing he acknowledged receipt of the notification of separation proceedings under Army Regulation 135-178, dated 1 August 2012. He understood he might expect to encounter substantial prejudice in civilian life if his service were characterized as general under honorable conditions or UOTHC. He further understood that if he were discharged UOTHC, he might be ineligible for many or all benefits as a veteran under both Federal and State laws. The memorandum is not filed in his AMHRR.

4. The 154th Legal Support Organization Trial Defense Service email (Reply: Request for Counsel (Applicant)), 12 September 2012, shows he requested a hearing before an administrative separation board. This document is not filed in his AMHRR.

5. Headquarters, 99th Regional Support Command, Orders 15-180-00047, 29 June 2015, discharged him under other than honorable conditions, effective 3 July 2015.

6. Headquarters, 99th Regional Support Command, Orders 15-183-0046, 2 July 2015, revoked Orders 15-180-00047.

7. He reenlisted in the USAR on 29 April 2016 and was promoted to the rank/grade of sergeant/E-5 effective 1 August 2016.

8. U.S. Army Human Resources Command Orders R-09-804411, 24 September 2018, ordered him to active duty in an Active Guard Reserve status effective 22 October 2018.

9. U.S. Army Human Resources Command Orders B-10-907621, 28 October 2019, awarded him primary military occupational specialty 27D, effective 26 September 2019.

10. Headquarters, 63d Readiness Division (USAR), Orders 20-120-00167, 29 April 2020, promoted him to the rank/grade of staff sergeant/E-6 effective 1 May 2020.

11. He reenlisted in the USAR on 7 October 2021.

12. He is currently assigned to an AGR position with the 139th Judge Advocate Legal Operations Detachment Team 2, Nashville, TN.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, 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 review based on law, policy, and regulation. Upon review of the applicant's petition and military records, the Board determined that the applicant did not demonstrate by a preponderance of evidence that procedural error occurred that was prejudicial to the applicant and by a preponderance of evidence that the contents of the discharge orders and subsequent revocation of discharge orders are substantially incorrect and support removal. Furthermore, the Board found the burden of proof rests with the applicant, and he provided no evidence to support his orders were in error. The Board concluded based on the preponderance of evidence found in the military record the applicant's claim for removal of the orders published on 29 June 2015 and 2 July 2015 are not warranted.

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.

REFERENCE:

Army Regulation 600-8-104 (Army Military Human Resource Records Management) prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR. Paragraph 3-7 (Authority for Filing or Removing Documents in the AMHRR Folders) provides that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the Army Board for Correction of Military Records or other authorized agency. The Required Documents List states separation orders are filed in the service folder of the AMHRR.

//NOTHING FOLLOWS//