

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 May 2024

DOCKET NUMBER: AR20230011320

APPLICANT REQUESTS:

- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 27 February 2003 to upgrade his character of service from under honorable conditions to honorable
- personal appearance before the Board via video/teleconference

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

DD Form 149 (Application for Correction of Military Record)

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 believes he previously received an upgrade to his characterization of service from the "Review Boards Agency" and would like it to be reflected on his DD Form 214, since the Department of Veterans Affairs (VA) has not updated his record accordingly. He has misplaced the original document and was requesting a copy from ARBA, so he can receive educational assistance to pursue appropriate courses for a degree.
3. Although the applicant implies he received a characterization upgrade with the Army Review Boards Agency (ARBA), there is no evidence or prior application within ARBA. It is believed that the applicant is referring to a VA Review Boards Agency, which may have upgraded his characterization of service in 2012 for VA benefits.
4. The applicant's service record shows the following documents:
 - a. DD Form 4 (Enlistment/Reenlistment Document) he enlisted in the Regular Army on 17 October 2001.

b. Army Achievement Medal (AAM) Certificate reflects he was awarded the AAM for outstanding achievement while assigned as a rifleman during Millennium Challenge 2002 for the period of 30 July 2002 to 9 August 2002, pursuant to Permanent Order (PO) Number 237-04.

c. DA Forms 4856 (Developmental Counseling Form) shows he was counseled on:

- 26 August 2002 for failure to follow orders; failure to inform the chain of command of his appointments, profile and injury
- 5 September 2002 for lying to a non-commissioned officer (NCO); disobeying a lawful order
- 6 September 2002 for failure to inform the chain of command of the loss of his military equipment

d. On 18 September 2002, the applicant received non-judicial punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for on or about 4 September 2002, for disobeying a lawful order from an NCO. He was found guilty and received a reduction in grade to E-2 and forfeitures of pay of \$289.00 for one month (suspended). He also received punishment of 14 days restriction and extra duty. He did not appeal.

e. On 30 September 2002, his commanding officer informed the applicant he was initiating action to separate him under the provisions of Army Regulation (AR) 635-200, Chapter 14-12b, for patterns of misconduct.

f. DA Form 3822-R (Report of Mental Status Evaluation) dated 17 October 2002; shows he underwent a mental status evaluation. The report reflects he was mentally responsible for his behavior, can distinguish right from wrong and possesses sufficient mental capacity to understand and participate in board proceedings; there was no evidence of an emotional or mental disorder of psychiatric significance to warrant disposition through medical chapter. He met retention requirements of AR 40-501 (Standards of Medical Fitness), Chapter 3; and further show the following in remarks:

- Had normal behavior
- He was fully alert
- He was fully oriented
- His mood or affect was unremarkable
- His thinking process was clear
- His thought content was normal
- His memory was good
- Soldier was cleared for any administrative action deemed appropriate by command

g. On 26 December 2002, the applicant received a citation for driving under the influence.

h. DA Form 4856 dated 26 December 2002 reflects he was counseled for drinking while on Division Ready Force (DRF); driving under the influence; and failure to obey a lawful order.

i. DA Form 268-E (Report to Suspend Favorable Personnel Actions) dated 2 January 2003, shows he was flagged for adverse action.

j. On 22 January 2003, his commanding officer-initiated separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12b, for patterns of misconduct. After consulting with legal counsel for his separation action under and its effects of the rights available to him, and the effect of any action taken by him in waiving his rights. He further acknowledged:

- he could consult with consulting counsel as his military counsel and/or civilian counsel at no expense to the government
- he was advised he could submit any statements he desired in his own behalf
- he had not been subjected to coercion with respect to his request for discharge and had been advised of the implications that were attached to it
- he could be ineligible for many or all benefits administered by the VA
- he could be deprived of many or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he could expect to encounter substantial prejudice in civilian life by reason of a general under honorable conditions discharge

k. On 22 January 2003, the battalion commander also recommended that the applicant be discharged under the provisions of AR 635-200, Chapter 14, paragraph 14-12b, for patterns of misconduct and issued a general under honorable conditions discharge.

l. In a personal statement dated 30 January 2003, the applicant states in effect, on all accounts of his offences, his behavior was unacceptable. Although his behavior was wrong and irresponsible, at times, he was confused as to simply what the right thing to do was.

m. On 6 February 2003 the separation authority directed that the applicant be separated from the Army with a characterization of General Under Honorable Conditions and will not be transferred to Individual Ready Reserve (IRR). Additionally, he was barred from ever entering the installation.

n. DD Form 214 for the period ending 27 February 2003, shows he was discharged with an under honorable conditions (general) discharge, due to misconduct, pursuant to Army Regulation 635-200, Chapter 14-12b. He received a separation code of "JKA" and a reentry code of "3". He completed 1 years, 4 months, and 11 days of net active service this period.

5. A review of the applicant's records shows he is authorized an award not listed on his DD Form 214. The correction will be made in the administrative notes of these proceedings without the need for Board action.

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 and available military records, the Board found insufficient evidence of in-service mitigating factors to overcome the pattern of misconduct. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination.

2. The Board found the applicant's service record exhibits numerous instances of misconduct during his second enlistment period for 1 years, 4 months, and 11 days of net active service this period. He was discharged for pattern of misconduct and was provided an under honorable conditions (General) characterization of service. The Board agreed that 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 denied relief.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

4. 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:

Except for the correction addressed in Administrative Note(s) below, 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 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):

A review of the applicant's records shows he is authorized an additional award not listed on his DD Form 214. As a result, amend his DD Form 214 for the period ending on 27 February 2003 by adding to item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) the AAM pursuant to PO Number 237-04.

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 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. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. 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 14-12b 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), commission of a serious offense, and convictions by civil authorities. 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 such is merited by the Soldier's overall record.

4. 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.

5. 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

6. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "JKA" is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 14-12b, based on Misconduct.

7. 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/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. 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 based on 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. 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//