

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2024

DOCKET NUMBER: AR20230011339

APPLICANT REQUESTS: in effect, correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect in items:

- 12b (Separation Date This Period): 30 August 1997, to coincide with net active service of 4-years
- 12c (Net Active Service This Period): 4-years, 0-months and 0-days
- 18 (Remarks): member completed first full term of service
- 24 (Character of Service): Honorable
- 28 (Narrative Reason for Separation): something other than misconduct

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

- DD Form 149 (Application for Correction of Military Record)
- Army Review Boards Agency letter

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, all the negative entries on his DD Form 214 were a result of reprisal by his First Sergeant. Therefore, he requests the correction of his DD Form 214 to reflect he completed his first full term of service of 4-years. Due to the harsh treatment of his separation, he has struggled with depression which had caused his delay in seeking justice to correct his separation document.

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

a. On 20 July 1993, the applicant enlisted in the U.S. Army Reserve (USAR) Delayed Entry Program (DEP) for 8-years of military service obligation.

b. On 1 September 1993, he was discharged from the USAR DEP and enlisted in the Regular Army for 4-years. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) states in 8a, that enlistment in the USAR DEP is in a non-pay status and the period of time in the DEP was not creditable for pay purposes. However, the period in the DEP would count toward the fulfillment of the military service obligation or commitment.

c. The applicant's official records are void of separation documents. Her record contains Orders Number 233-0204, issued by the 203rd Personnel Service Battalion, on 21 August 1997, reassigning the applicant (in the rank of private first class/E-3) to the U.S. Army transition point on 26 August 1997, for transition processing for discharge from active duty, effective 28 August 1997, for an involuntary separation.

d. On 28 August 1997, the applicant was discharged from active duty under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b with a general under honorable conditions character of service due to misconduct. DD Form 214 shows in items:

- Item 12c; 3 years, 11 months, and 28 days
- Item 13, Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows: National Defense Service Medal, Army Service Ribbon, Sharpshooter Marksmanship Qualification Badge with Rifle Bar with Automatic Rifle Bar
- Item 26 (Separation Code) JKA
- Item 27 (Reentry Code) 3

4. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge from the U.S. Army Reserve (USAR) to an honorable discharge along with other corrections to his DD Form 214, including, his period of service and narrative reason. He selected OMH and reprisal on his application as conditions related to his request.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted in the USAR on 20 July 1993.
- On 1 September 1993, he was discharged from the USAR DEP and enlisted in the Regular Army for 4-years. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) states in 8a, that enlistment in the USAR DEP is in a non-pay status and the period of time in the DEP was not creditable for pay purposes. However, the period in the DEP would count toward the fulfillment of the military service obligation or commitment.

- The applicant's official records are void of separation documents. His record contains Orders Number 233-0204, issued by the 203rd Personnel Service Battalion, on 21 August 1997, reassigning the applicant (in the rank of private first class/E-3) to the U.S. Army transition point on 26 August 1997, for transition processing for discharge from active duty, effective 28 August 1997, for an involuntary separation.
- The applicant was discharged from active duty on 28 August 1997 under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b with a general under honorable conditions character of service due to misconduct. His DD Form 214 shows separation code JKA and RE code 3.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states all negative entries on his DD Form 214 were a result of reprisal by his First Sergeant. Therefore, he requests correction of his DD Form 214 to reflect he completed his first full term of service of 4-years. Due to the harsh treatment of his separation, he has struggled with depression which caused his delay in seeking justice to correct his separation document. Due to the period of service, no active-duty electronic medical documentation was available for review and the applicant did not provide any medical documentation substantiating his assertion of depression.

d. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and no VA electronic behavioral health medical records were available for review. Per the available VA electronic medical record, the applicant has not been treated or diagnosed with any behavioral health condition. A member of the ARBA Case Management Division contacted the applicant on 8 January 2024 requesting medical documentation substantiating his assertion of depression, no response was received.

e. Based on the information available, this Agency Behavioral Health Advisor is unable to opine regarding mitigation without the specific facts and circumstances that led to his discharge. However, there is insufficient evidence to support the applicant had any behavioral health condition during military service that mitigates his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts a mitigating condition, depression and reprisal.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or after discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unable to opine regarding mitigation without the specific facts and circumstances that led to his separation. However, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for depression or any other mental health condition. And while the applicant self-asserted depression, he did not provide any medical documentation substantiating any BH diagnosis or condition.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The completed facts and circumstances surrounding the applicant's discharge are not available (separation packet is not available). The applicant's DD Form 214 shows he was discharged from active duty under the provisions of AR 635-200, paragraph 14-12b (pattern of misconduct) with a general under honorable conditions character of service due to misconduct. He completed 3 years, 11 months, and 28 days of active service.

a. Separation Date: Deny. The evidence shows the applicant was ordered separated from active duty on 30 August 1997. The Board did not find, and the applicant did not provide evidence he was separated on a different or a later date.

b. Net Active Service: Deny. The evidence (DD Form 214) shows the applicant completed 3 years, 11 months, and 28 days. There is no evidence the applicant remained on active duty longer than what is listed on his DD Form 214.

c. First Term of Service: Deny. The applicant enlisted in the Regular Army for 4 years. He completed 3 years, 11 months, and 2 days of his enlistment commitment, 2 days short of completing his first full term of service.

d. Character of Service: Deny. The applicant was discharged from active duty due to a pattern of misconduct as evidence don his DD Form 214. The Board found no error or injustice in the available separation processing. The Board also reviewed and agreed with the medical reviewer's determination that in the absence of a separation packet, it is not possible to excuse or mitigate the discharge. Also, there is insufficient evidence of any mitigating behavioral health (BH) condition. There is no evidence of any in-service BH diagnoses, and the applicant did not provide any medical documentation substantiating any BH diagnosis or condition. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

e. Reason for Separation: Deny. The applicant's narrative reason for separation was assigned based on the fact that he was discharged under chapter 14-12b of AR 635-200. He committed offenses punishable under the UCMJ. Absent his UCMJ violations/misconduct, there was no reason to process him for separation. The Board noted that the underlying reason for his separation is his misconduct. The only valid narrative reason under chapter 14-12b of AR 635-200 is "Misconduct" which is correctly listed on his DD Form 214.

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 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. Title 10, USC, 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 (AR) 635-200 (Personnel Separations – Enlisted Personnel) in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of soldiers for a variety of reasons.

a. Paragraph 1-31 (Effective date of discharge), a. The discharge of a Soldier for the reasons listed in (1) and (2) below is effective at 2400 on the date of notice of discharge. The Soldier will be so notified; (1) Discharge because of Expiration Term of Service or (2) Discharge to continue on active duty in the same or another status. b. Release from active duty is effective at 2400 on the date of release when the Soldier; (1) Is transferred to the USAR to complete a reserve obligation or (2) Is transferred to the temporary disability retired list. c. For a Soldier who entered on active duty from a reserve component, who reverts to USAR or State ARNG control, release is effective at 2400 on the date of expiration of authorized travel time. d. Discharge for all reasons other than those set forth in a, b, and c above is effective at 2400 on the date of notice of discharge to the Soldier.

b. Paragraph 3-7a (Honorable discharge.), an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Only the honorable characterization may be awarded a Soldier upon completion of his or her period of enlistment or period for which called or ordered to AD or ADT, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted. When a Soldier is discharged before ETS for a reason for which an honorable discharge is discretionary, the following considerations apply. Where there have been infractions of discipline, the extent thereof should be considered, as well as the seriousness of the offense(s). A Soldier will not necessarily be denied an honorable discharge solely by reason of a specific number of convictions by court-martial or actions under the Uniform Code of Military Justice Article 15. Conviction by a general court-martial or by more than one special court-martial does not automatically rule out the possibility of awarding an honorable discharge. An honorable discharge may be furnished when disqualifying entries in the Soldier's military record are outweighed by subsequent honest and faithful service over a greater period of time during the current term of service.

c. Paragraph 3-7 b (General discharge), (1) 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.

d. Paragraph 4-4 (Characterization of service), a Soldier being separated upon expiration of enlistment or fulfillment of service obligation will be awarded a character of service of honorable, unless the Soldier is in entry level status and service is uncharacterized.

e. Paragraph 14-1, this chapter establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities; desertion, and absence without leave.

f. Paragraph 14-3 (Characterization of service or description of separation), 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. When the sole basis for separation is a serious offense which resulted in a conviction by court-martial that did not impose a punitive discharge, the Soldier's service may not be characterized under other than honorable conditions unless approved by HQDA. When a Soldier has completed entry level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate. A characterization of honorable may be approved only by the commander exercising general court-martial jurisdiction or higher authority unless authority.

g. Paragraph 14-12b (A pattern of misconduct), a pattern of misconduct consisting of: (1) Discreditable involvement with civil or military authorities. (2) Conduct prejudicial to good order and discipline. Discreditable conduct and conduct prejudicial to good order and discipline includes conduct violative of the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

3. AR 635-5 (Separation Documents), in effect at the time, prescribes the separation documents which are prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. It establishes standardized policy for preparing and distributing DD Form 214 (Certificate of Release or Discharge from Active Duty). Paragraph 2-8 (DD Form 214 Instructions), table 2-1 (DD Form 214 Preparation Instructions), for items:

- 12a (Date entered Active Duty this Period) - enter the date of the first day of the last immediate reenlistment for which a DD Form 214 was not issued under the provisions of paragraph 1-4b(5)
- 12b (Separation Date This Period) - Self-explanatory
- 12c (Net Active Service This Period) - all service entered will be less time lost under Title 10, USC, section 972 and time lost after expiration of term of service
- 18 (Remarks) the remarks section for entries required by HQDA for which a separate item is not available and for completing entries that are too long
- 24 (Character of Service)- authored entries are:
 - Honorable
 - Under Honorable Conditions (General)
 - Under Other Than Honorable Conditions
 - Bad Conduct
 - Dishonorable
- 28 (Narrative Reason for Separation) - enter the reason for separation (shown in AR 635-5-1) based on the regulatory or statutory authority.

4. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities (regulatory or other directives), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214.

a. Paragraph 2-3 (Rules for SPD Code Control and Usage), The narrative reason for separation will be entered in block 28 of the DD Form 214 exactly as listed in either Appendix B or c of this regulation. No deviation is authorized.

b. Table C-3 (Involuntary Discharge – SPD Codes applicable for enlisted personnel), regulatory authority, AR 635-200, para 14-12b; narrative reason – misconduct; SPD Code – JKA

5. AR 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. Paragraph 2–9 (Burden of proof), 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.

//NOTHING FOLLOWS//