

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 June 2024

DOCKET NUMBER: AR20230011421

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show an honorable character of service, vice under other than honorable conditions.

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 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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 recently learned that, in 2019, his character of service was upgraded to honorable; he would like the Board to correct his DD Form 214 accordingly. (Neither the Army Discharge Review Board nor the ABCMR show a prior consideration of this applicant's character of service.)

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

a. On 11 June 1987, the applicant enlisted into the Regular Army for 3 years; upon completion of initial entry training and the award of military occupational specialty 94B (Food Service Specialist), orders assigned the applicant to Germany, and he arrived at his new unit, on 12 November 1987. Effective 1 June 1989, the applicant's leadership promoted him to specialist (SPC)/E-4. On 10 January 1990, the applicant immediately reenlisted for 3 years.

b. On 26 March 1990, the applicant completed his tour in Germany, and orders reassigned him to Fort Benning, GA (now renamed Fort Moore). On 14 October 1990, the applicant deployed to Southwest Asia; he redeployed, on 16 April 1991. Orders subsequently reassigned the applicant to Berlin, Germany, and he arrived, on 21 October 1991.

c. On 27 January 1992, the Commanding General, U.S. Army, Berlin, issued the applicant a general officer memorandum of reprimand (GOMOR) after military police observed the applicant driving drunk; the applicant's blood alcohol was 2.06 milligrams (mg) per milliliter (ml).

(1) The applicant submitted a rebuttal, in which he disclosed that his drinking had gotten out of hand due to the stress of new responsibilities: he recently married, he would soon become a father, and, after a deployment to Saudi Arabia and his reassignment to Berlin, he had assumed duties as a dining facility shift leader.

(2) On 19 February 1992, the authorized official directed the GOMOR's filing in the applicant's official military personnel file.

(3) The applicant's available service record does not show whether the command referred the applicant for screening per Army Regulation (AR) 600-85 (Alcohol and Drug Abuse Prevention and Control Program).

d. The applicant's separation packet is unavailable for review; however, the applicant's service record includes his DD Form 214, which shows that, on 3 September 1992, the Army discharged the applicant under other than honorable conditions. The DD Form 214 additionally reflects the following:

(1) Items 4a (Grade, Rate, or Rank) and 4b (Pay Grade) – Private (PV1)/E-1

(2) Item 12c (Net Active Service This Period) – 5 years, 2 months, and 23 days

(3) Item 12h (Effective Date of Pay Grade) – 18 August 1992

(4) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized):

- Army Good Conduct Medal (1st Award)
- Joint Meritorious Unit Award
- Army Service Ribbon
- Overseas Service Ribbon
- Southwest Asia Service Medal with three bronze service stars
- Marksman Marksmanship Qualification Badge
- Overseas Service Bar
- Kuwait Liberation Medal

(5) Item 18 (Remarks) – The entry showing continuous honorable service from 19870611 to 19900109 is missing.

(6) Special Additional Information:

- Item 25 (Separation Authority) – AR 635-200 (Personnel Separations – Enlisted Personnel), chapter 10 (Discharge for the Good of the Service)
- Item 28 (Narrative Reason for Separation) – For the Good of the Service
- Item 29 (Dates of Time Lost During this Period) – None

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination.
2. The Board noted that the available records do not document the court-martial charge(s) that would have been the basis for his voluntary request to be discharged for the good of the service in lieu of trial by court-martial. The Board found that the Army's failure to maintain a complete record unfairly disadvantaged the applicant. Although the record shows a history of alcohol-related misconduct, the Board found no evidence of serious misconduct that would have warranted the character of service he received. The Board also noted his deployed service and his prior period of honorable service as a basis for clemency. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to honorable. The Board noted that, because the basis for his reduction to the lowest enlisted grade was his original character of service, this correction will entail restoring his rank to private 2.
3. The Board concurs with the corrections described in the Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- reissuing his DD Form 214 to show his character of service as honorable and his rank/grade as private 2/E-2 with an effective date of pay grade of 10 February 1992
- making the corrections described in Administrative Note(s) below

12/9/2024

X █

CHAIRPERSON

█

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): The applicant's DD Form 214 is missing entries. Please correct the DD Form 214 as follows:

- item 13 – delete "Kuwait Liberation Medal" and add "Kuwait Liberation Medal – Saudi Arabia" and "Kuwait Liberation Medal – Government of Kuwait"
- item 18 – add "CONTINUOUS HONORABLE SERVICE FROM 19870611 TO 19900109."

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. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable character of service represented a separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when a Soldier's subsequent honest and faithful service, over a greater period, outweighed any disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 5-3 (Secretarial Authority – Policy) stated the separation of enlisted personnel was the prerogative of the Secretary of the Army and was to be based on the Secretary's determination that separation was in the best interests of the Army. Soldiers being separated for the convenience of the Government were to be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service, if in entry-level status. No Soldier was to be awarded a character of service under honorable conditions unless the Soldier was notified of the specific factors in his/her service record that warranted such a characterization.

d. Chapter 10 applied to Soldiers who had committed an offense or offenses for which the punishment under the UCMJ included a punitive (i.e. bad conduct or dishonorable) discharge. Soldiers could voluntarily request discharge once charges had been preferred; commanders were responsible for ensuring such requests were personal decisions, made without coercion, and following being granted access to counsel. The Soldier was to be given a reasonable amount of time to consult with counsel prior to making his/her decision. The Soldier was required to make his/her request in writing, which certified he/she had been counseled, understood his/her rights,

could receive an under other than honorable conditions character of service, and recognized the adverse nature of such a character of service.

3. AR 600-200 (Enlisted Personnel Management System), in effect at the time, stated in paragraph 6-11 (Approved for Discharge from Service Under Other Than Honorable Conditions) that when a separation authority determined a Soldier was to be discharged from the Service under other than honorable conditions, the regulation required the separation authority to reduce that Soldier to the lowest enlisted grade. Board action was not required for this reduction.

4. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for the completion of the DD Form 214. The regulation linked the narrative reason for separation to the regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 for this entry and the separation code (SPD).

5. AR 635-5-1 (SPD), in effect at the time, showed the narrative reason for separation assigned to Soldiers separated per chapter 10, AR 635-200 was, "For the Good of the Service." and the SPD was "JFS."

6. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers and Reserve Component Soldiers; the table shows the SPD code and its corresponding RE code. The SPD code of "JFS" has a corresponding RE code of "3."

7. AR 15-185, currently in effect, states:

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

b. 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 is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

8. 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//