

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 May 2024

DOCKET NUMBER: AR20230011887

APPLICANT REQUESTS:

- in effect, correction of Orders 05-151-00027, dated 31 May 2005 to show his type of discharge as honorable
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 4856 (Developmental Counseling Form), 17 May 2005
- Letter from Department of Veterans Affairs (VA)
- Visit and Patient Information Documents

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 he is seeking an amendment to upgrade his discharge from under honorable conditions (General) to honorable to align with his Department of Defense (DOD) [sic] record. The DOD lists his discharge as honorable. He discovered the discrepancy when verifying his status. Due to this mismatch, he has been denied benefits and VA assistance. He urges correction of this issue. His community service record reflects his commitment. The under honorable conditions (General) discharge has hindered his ability to showcase his proud military service, leading to challenges. He has persevered independently, but aligning records with the DOD will enable him to move forward effectively.
3. The applicant provides the following documents:
 - a. DA Form 4856, dated 17 May 2005, wherein the applicant was counseled for an

unexcused absence in February 2005 for inactive duty training/unit training assembly. It states the applicant would not go to drill. The recommendation was to discharge the applicant from the U.S. Army Reserve (USAR). The applicant was unavailable for signature.

b. Letter from the VA, dated 9 February 2022, which certifies the applicant was discharged from the U.S. Armed Forces having served in the Army from 14 January 2003 to 1 July 2003 with an honorable characterization of service.

c. Visit and Patient Information from Kaiser Permanente are available for the Board's review.

4. The applicant's complete military service records are unavailable for the Board to review. The Soldier Management System, a web-based performance management tool, shows:

a. The applicant's date of initial entry into the USAR as 13 June 2002. His expiration term of service was 12 June 2010.

b. Orders 05-151-00027, published by Headquarters, 63d Regional Readiness Command, dated 31 May 2005, discharged the applicant from the USAR effective 31 May 2005. The type of discharge was under honorable conditions (General).

c. On 31 May 2005, the applicant was involuntarily discharged from the USAR for unsatisfactory participation.

d. A DA Form 5016 (Chronological Statement of Retirement Points), dated 9 May 2024 shows from 13 June 2003 to 12 June 2004, the applicant was a member of the USAR and received a total of 82 points and 1 year of qualifying service for retirement. From 13 June 2004 to 31 May 2005, the applicant received a total of 41 points.

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 Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's conduct and the reason for separation. The applicant was discharged for unsatisfactory participation in the U.S. Army Reserve and therefore separated with an under honorable conditions (General) characterization of service. The Board found no error or injustice in the designated characterization of service assigned

during separation. The Board concluded that the characterization of service the applicant received upon separation was appropriate.

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.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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, 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 (AR) 15-185 (ABCMR), prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. It states:

a. 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.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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. AR 635-200 (Personnel Separations-Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel. It states, notwithstanding the notification provisions of Army Regulation 135-178 (Army National Guard and Army Reserve Separation of Enlisted Personnel), Soldiers who are unsatisfactory participants to be discharged, will be given 15 days from the date found on the official mail return receipt, or the date they acknowledged receipt if hand delivered, to respond to notification of initiation of discharge actions.

4. AR 135-178, in effect at the time, states when the reason for separation requires the Notification Procedure, the commander will notify the Soldier in writing that his separation has been recommended. The commander will cite specific allegations on which the proposed action is based and the specific provisions of the regulation authorizing separation. The Soldier would be advised of the least favorable characterization of service he could receive. He would be advised of the following rights:

- to consult with counsel to submit matters on his own behalf
- to obtain copies of document that would be sent to the separation authority
- to present his case before an administrative separation board if he had more than 6 years of service
- to waive his rights

5. AR 135-91 (Service Obligations, Methods of Fulfilment, Participation Requirements, and Enforcement Procedures), defines ARNGUS and USAR service obligations and prescribes policy and procedures governing the various types of service obligations and participation requirements. Chapter 4 governs absences and provides, in part, that:

a. The unit commander or acting commander is authorized to excuse absences. Any absence not authorized by the approving official is considered unexcused. A Soldier is an unsatisfactory participant when nine or more unexcused absences occur during a 1-year period. Unless the absence is authorized, a Soldier failing to attend a scheduled single or multiple unit training assembly (MUTA), will be charged with an unexcused absence. When the absence involves a MUTA, the charge will be for one unexcused absence for each 4-hour period not attended, but not to exceed four unexcused absences.

b. Unit commanders will notify Soldiers with unexcused absence(s) by prescribing a letter of instructions-unexcused absence [U-Letters]. The first notification commences with the fourth unexcused absence and each succeeding unexcused absence up to, and including the ninth absence in a 12-month period.

c. Delivery of the letter will be either in person or by U.S. mail. If mail is used in lieu of deliver in person, the first notification will be sent by certified mail, return receipt requested and the remaining notification(s) will be sent by first class mail. The notice will be mailed during or immediately following the unit training assembly (UTA) or multiple unit training assemblies (MUTA) from which absent. Whether notices required are delivered in person or sent by U.S. mail, a copy of each notice and the following will be place in the soldier's personnel file.

(1) When the notices are personally delivered, the Soldier's signature will be obtained on the file copy as acknowledgment of receipt.

(2) When certified mail is used, a copy of the notice and either a post office receipt confirming delivery or the returned unopened envelope showing the notice was not delivered. Mail refused, unclaimed, or otherwise not delivered may not be used as a defense against unexcused absences when the notices were correctly addressed.

(3) When first class mail is used, a copy of the notice and the envelope showing the notice was sent to the soldier's most recent mailing address. Also, the individual mailing the notice will prepare an "affidavit of service by mail." Mail refused, unclaimed, or otherwise not delivered may not be used as a defense against unexcused absences when the notices were correctly addressed; and

(4) The commander's statement showing his or her decision as to whether the reason, which prevented the soldier from attending training assembly, which resulted in

a declaration of unsatisfactory participation, was valid or any emergency. The facts or circumstances on which the decision is based will be included in the statement.

d. When it has been determined that an ARNGUS or USAR enlisted soldier is an unsatisfactory participant, the immediate commander will initiate proceedings that result in the reassignment, transfer, or separation of the unsatisfactory participant as prescribed.

6. 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.

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 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.

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//